

COMMERCE & HUMAN RESOURCES

ADMINISTRATIVE RULES REVIEW

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2007 Legislative Session

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COMMERCE & HUMAN RESOURCE

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-4702, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There are no changes to the pending rule. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the September 6, 2006 Idaho Administrative Bulletin, Volume 06-9, pages 25 through 30.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Roger Holmes, UI Benefits Administration Bureau Chief, (208) 332-3570 ext. 3233.

DATED this 6th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 67-4702, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

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DEPARTMENT OF COMMERCE & LABOR
Unemployment Insurance Benefits Administration Rules

Docket No. 09-0130-0601
PENDING RULE

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 09.01.30.100.01 and 100.04 would be amended to provide that if a claimant's illness lasts for more than one week, the claimant will be ineligible for benefits effective the week his accumulated missed wages (because of the illness) exceed one-half (½) of his weekly benefit amount.

IDAPA 09.01.30.425.10 would be amended to provide that employers will provide separation information to the Department when contacted by a Department representative, rather than mailing a report to the Department.

IDAPA 09.01.30.460 would be a new rule providing that professional athletes who are between seasons can't use their base period wages for services as athletes to establish a claim for benefits if they have a contract for the next season or intend to participate in the sport the next season, even without a formal offer of employment.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: This is a federally funded program and there is no financial impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the nature of the proposed changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Roger Holmes, UI Benefits Bureau Chief, 332-3570 ext. 3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this August 2, 2006.

Roger Holmes, UI Benefits Bureau Chief
Department of Commerce and Labor
Unemployment Insurance Benefits Administration
317 W. Main Street, Boise, ID 83735
332-3570 ext. 3233 / 334-6301 fax

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DEPARTMENT OF COMMERCE & LABOR
Unemployment Insurance Benefits Administration Rules

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PENDING RULE

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

100. ABLE TO WORK.

“Able to work” is defined as the physical and mental ability to perform work under conditions ordinarily existing during a normal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

01. Able to Perform Some Type of Work. A person must be able to perform work of some type for which he can qualify at the time he files an initial claim for unemployment insurance. If he becomes ill or disabled after he has filed an initial claim, the claim may be continued under the illness provision if no suitable work is available. If suitable work is offered or becomes available which would have provided wages greater than one-half (1/2) his weekly benefit amount and cannot be accepted because of the claimant's illness or disability, the claimant shall be ineligible for benefits. If the same illness or disability continues for more than one (1) week and the accumulation of missed wages exceeds one-half (1/2) his weekly benefit amount, the claimant shall be ineligible for benefits effective the week in which the accumulated missed wages exceed one-half (1/2) the weekly benefit amount. ~~(3-19-99)~~(____)

02. Able to Work Part-Time. A person who is able to work only part of the workday or part of the workweek is not considered “able to work” for the purposes of Section 72-1366(4), Idaho Code. This rule does not apply to claimants who establish eligibility under the Americans with Disabilities Act. (3-19-99)

03. Disability Compensation. A claimant's receipt of disability compensation shall not in itself establish that he is unable to work or unavailable for work, even though the payee has been declared totally disabled. (3-19-99)

04. Illness Provision. A person who claims benefits under the illness provision must remain available for local office job referral, however, he may leave the area for treatment of ~~the~~ his illness and continue to be eligible under the illness provision. The claimant may continue reporting through the local office near his residence. If suitable work becomes available and is refused or missed because of the claimant's illness, or the claimant is unable to respond to a referral because of the illness, the claimant shall be ineligible if the work would have provided wages greater than one-half (1/2) his weekly benefit amount. If the same illness or disability continues for more than one (1) week and the accumulation of missed wages exceeds one-half (1/2) his weekly benefit amount, the claimant shall be ineligible for benefits effective the week in which the accumulated missed wages exceed one-half (1/2) the weekly benefit amount. ~~(3-19-99)~~(____)

05. Illness Provision as Applied to Transitional or Reopened Claim. Receipt of benefits during the same illness continues throughout a spell of unemployment, even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment. (3-19-99)

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06. Mental Illness. A person who, after filing a valid claim, becomes unable to work because of mental illness is entitled to the same benefits under the illness provision as claimants who suffer from other types of illness or disability. (3-19-99)

07. Withdrawing from Labor Market Because of Illness. A claimant who withdraws from the labor market because of illness or injury prior to filing a claim is not eligible until he is able to work and available for work. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

425. NEW CLAIMS/ADDITIONAL CLAIMS.

Ref. Sec. 72-1308, Idaho Code.

(3-19-99)

01. Claims for Benefits, Delayed Filing. When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

02. Effective Date of Backdated Claims. When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

03. Filing of New Claims. New intrastate and interstate claims may be filed electronically, in person at a local office or at an itinerant location, or by mail if permitted by a claims examiner. New interstate claims may also be filed by telephone. (3-30-01)

a. Electronically Filed Claims. Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

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b. In-person Filing. A claimant may file a claim in person at the local office serving the claimant's area of residence. Local offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. (4-11-06)

c. Interstate Claims. Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

d. Itinerant Locations. Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

e. Mailed Claims. A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark. (3-30-01)

04. Itinerant Claims. Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

05. Registration for Work. All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

06. Registration/Reporting Requirements -- Interstate Claimants. Interstate claimants shall be required to register for work in the State in which they reside and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

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07. Requirement to Provide Information. If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

- a. The claimant's legal name; (3-15-02)
- b. The claimant's Social Security Number; (3-15-02)
- c. The address where the claimant's mail is delivered; (3-15-02)
- d. The claimant's place of last employment; (3-15-02)
- e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)
- f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)
- g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)
- h. Other information necessary for the proper processing of the claim. (3-15-02)
- i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)
- j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits may be denied for failure to provide proof of identity. A claimant notified by telephone of the need to provide proof of identity must provide the information to the Department within two (2) business days. A claimant notified by mail of the need to provide proof of identity must provide the information to the Department within five (5) business days of the date of mailing of the notice. (4-11-06)

08. Right to Claim Benefits. In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

09. Separation Information. Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed fourteen (14) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the

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type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. (4-11-06)

10. Separation Notice. (3-19-99)

a. ~~Request for~~ Notice to Employer of Separation ~~Information~~. At the time a claim for benefits is filed, the Department will review the claimant's employment subsequent to which the claimant has not earned fourteen (14) times his weekly benefit amount. The Department will mail a separation notification letter to each employer within that period. A Department representative will then contact the employer within seven (7) business days for a response, unless the claimant indicated he quit the job for reasons not attributable to the employer. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), ~~after receiving a request for separation information from the Department because an individual has filed a claim for benefits when contacted by a Department representative for a response, shall submit~~ respond to the Department ~~a report of~~ with the reasons for the separation whenever ~~such~~ the claimant: (4-5-00)()

i. Left his employment voluntarily; (3-19-99)

ii. Was discharged from his employment due to misconduct; (3-19-99)

iii. Is unemployed due to a strike, lockout, or other labor dispute; ~~or~~ (3-19-99)()

iv. Is not working due to a suspension; or ()

v. Was separated for any other reason except lack of available work. (3-19-99)

b. Employer Response. The employer's response shall be ~~completed in accordance with instructions printed on the Department's request for separation information and shall be completed given~~ by the employer or on the employer's behalf by someone having personal knowledge of the facts ~~therein stated~~ concerning the separation. The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position. (3-15-02)()

11. **Filing of an Additional Claim or Reopening a Claim.** A claim series may be reestablished, electronically, in person at a local office or at an itinerant location, by telephone, or by mail. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-30-01)

a. In-person Filing. When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

b. Mailing. A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)

c. Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location,

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by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

d. Telephone Filing. A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. (3-30-01)

e. Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)

ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

12. Use of Wage Credits. All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

13. Valid Claim. To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

451. -- ~~474~~59. (RESERVED).

460. PROFESSIONAL ATHLETES BETWEEN SEASONS.

Ref. Sec. 72-1366(18), Idaho Code.

()

01. Base Period Wages. No base period wages shall be used for the purposes of establishing a claim when substantially all services performed during the base period consist of participation in sports, athletic events, training, or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed such services in the first season (or similar period) and there is a reasonable

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assurance that the individual will perform such services in the later of such seasons (or similar periods). ()

02. Reasonable Assurance. Reasonable assurance is defined as any of the following: ()

a. The claimant has a contract, either written or oral; ()

b. The claimant offered to work and the employer expressed an interest in hiring the player for the next season (or similar period); or ()

c. The claimant expresses a readiness and willingness or intent to participate in the sport the following season. Reasonable assurance exists if the claimant asserts he or she intends to pursue employment as a professional athlete the next season despite not having a specific employer to return to or a formal offer of employment. ()

03. Substantially All Services. For the purposes of Section 460, an individual shall be deemed to have performed “substantially all services” in sports, athletic events, training, or preparing to so participate if ninety percent (90%) or more of the base period wages were based on such services. ()

461. -- 474. (RESERVED).

COMMERCE & HUMAN RESOURCE

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in therein.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-4702, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The proposed rule has been amended to make typographical, transcriptional, and clerical corrections to the rule. The rule is being amended pursuant to Section 67-5227, Idaho Code. The amendment corrects an incorrect citation to Idaho Code found in IDAPA 09.01.35.134.02.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rule was published in the September 6, 2006, Idaho Administrative Bulletin, Volume 06-9, pages 31 through 39.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Don Arnold, UI Compliance Bureau Chief, (208) 332-3570 ext. 3258.

DATED this 6th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

COMMERCE & HUMAN RESOURCE

DEPARTMENT OF COMMERCE & LABOR
Unemployment Insurance Tax Administration Rules

Docket No. 09-0135-0601
PENDING RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4702(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 09.01.35.011.01 is being amended to expressly require employers who pay no wages in a quarter to file a quarterly report for the quarter with zero wages reported. **IDAPA 09.01.35.011.11** is being amended to clarify that each covered employer's UI tax report shall be reported under the covered employer's account number, even if reported by a payroll service.

IDAPA 09.01.35.061 is being amended to add the definition of "willfully".

IDAPA 09.01.35.112.01, 09.01.35.112.03 & 09.01.35.112.04 are being amended to remove the mandatory language for the factors to be considered in determining a worker's status and replace with permissive language that allows the Department to consider any and/or all of the enumerated factors. **IDAPA 09.01.35.112.03** is also being amended to clarify factors for the direction or control test. **IDAPA 09.01.35.112.03** is further being amended to add consideration of direction or control an employer may have when a worker performs services under the alleged employer's license, permit or certificate, acquired under federal, state or local laws and/or regulations, and the employer under such laws is required to direct and control the activities of the worker. **IDAPA 09.01.35.112.03** is further being amended by consideration of other factors to determine the existence of or lack of the employer's exercise of direction or control.

IDAPA 09.01.35.134.02 and 04 will be changed to eliminate duplication within the PEO rule.

A new section, **IDAPA 09.01.35.263**, will clarify that if an employer meets coverage requirements during a calendar year, the quarterly reports for the wages paid in prior quarters of the same calendar year will be due on the due date for the quarterly report in which the employer became a covered employer and quarterly reports for subsequent quarters are due at the end of each quarter.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year

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resulting from this rulemaking: There will be no impact on the State General Fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the nature of the proposed changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Arnold, UI Compliance Bureau Chief, (208) 332-3570 ext. 3258.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this August 2, 2006.

Don Arnold
UI Compliance Bureau Chief
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Boise, ID 83735
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THE FOLLOWING IS THE TEXT OF THE PENDING RULE

011. GENERAL PROVISIONS.

The following Unemployment Insurance Tax Administration Rules are adopted pursuant to Section 67-4702, Idaho Code. (4-11-06)

01. Quarterly Reporting. Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Sec. 72-1337, Idaho Code. ~~(3-19-99)~~()

02. Contribution Due Date. Contributions are due on or before the last day of the month following the calendar quarter except if the last day of the month falls on a weekend or holiday, in which case the next workday is the due date. Ref. Sec. 72-1349, Idaho Code.(3-19-99)

03. Penalties and Interest on Bankruptcy. Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Sec. 72-1356, Idaho Code. (3-19-99)

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04. Lien Interest. Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien, at a rate established by law. (See Section 056). Ref. Sec. 72-1360, Idaho Code. (3-19-99)

05. Penalty and Interest During Controversy. Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sec. 72-1354 and 72-1360, Idaho Code. (3-19-99)

06. Confidential Information. Information obtained from an employer shall be held as confidential and shall not be released without the consent of the employer except as provided in IDAPA 09.01.08, "Rules on Disclosure of Information," Section 011 or when disclosure is necessary for collection of any amount due under the employment security law, or as otherwise provided by law or these rules. Ref. Sec. 9-340 and 72-1342, Idaho Code. (3-19-99)

07. Filing of an Employer Appeal. (3-30-01)

a. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or redetermination of the Department. The appeal may be filed by delivering it, or faxing it, to any Idaho Commerce & Labor local office or to the ~~Tax and Benefit Control~~ UI Compliance Bureau of the Idaho Department of Commerce and Labor, 317 W. Main Street, Boise, Idaho 83735. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by a Idaho Commerce & Labor local office or the ~~Tax and Benefit Control~~ UI Compliance Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by a Idaho Commerce & Labor local office or the ~~Tax and Benefit Control~~ UI Compliance Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Idaho Commerce & Labor local office or to the ~~Tax and Benefit Control~~ UI Compliance Bureau, Idaho Department of Commerce and Labor, 317 W. Main Street, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Ref. Sec. 72-1361, Idaho Code. (4-11-06)()

b. An appeal should be accompanied by a specific statement, information or evidence which provides an explanation as to why the original determination is erroneous. (3-30-01)

c. In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if (i) the employer files reports for the periods covered by the determination before the determination becomes final, and (ii) the Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

08. Determinations. Determinations shall be in writing, signed by an authorized representative of the director, and shall contain provisions which advise the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing of the

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determination in accordance with Section 72-1361, Idaho Code.

(3-30-01)

09. Determination of Payment Date. Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Sec. 72-1349, Idaho Code.

(3-19-99)

10. Release of Lien upon Payment in Full. An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Sec. 45-1908, Idaho Code.

(3-19-99)

11. Contribution Reports. Each contribution shall be accompanied by an employer's contribution report in a form or medium prescribed and furnished or approved for such purpose, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed or furnished by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Sec. 72-1349, Idaho Code.

(4-11-06)

a. Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sec. 72-1325 and 72-1315, Idaho Code.

()

(BREAK IN CONTINUITY OF SECTIONS)

061. DEFINITIONS.

The definitions listed in IDAPA 09.01.35, "Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to the ~~Tax and Benefit Control~~ UI Compliance Bureau.

(4-11-06)()

01. Tolerance Amount. A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Sec. 72-1349, Idaho Code.

(3-19-99)

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02. Wages. The term “wages” includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. “Wages” in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: (3-19-99)

a. Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services; (4-5-00)

b. Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; (3-19-99)

c. Commissions for past services in covered employment; (3-19-99)

d. Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; (4-5-00)

e. Salary advances against commissions; (3-19-99)

f. All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; (3-19-99)

g. Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-19-99)

h. Vacation or “idle-time” pay, no matter when paid; (3-19-99)

i. Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-19-99)

j. The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

k. Noncash payments for farm work, if such payments would be classified as wages for federal tax purposes. Ref. Sec. 72-1328, Idaho Code. (3-15-02)

03. Exclusions From Wages. The term “wages” described in Section 72-1328, Idaho Code, does not include the following: (3-19-99)

a. Prizes or gifts for special occasions which are expressions of good will; (3-19-99)

b. Bonuses paid for signing a contract; (3-19-99)

c. Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively

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the same size; (3-19-99)

d. Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (4-5-00)

e. Rental charge for personal equipment provided by the employee on the job: if (3-19-99)

i. There is a rental agreement; and (3-19-99)

ii. The worker has received a reasonable wage for services performed; and (3-19-99)

iii. The fees are held separately on the employer's records. (3-19-99)

f. Stock or membership interests issued for purposes other than services performed or to be performed; (3-19-99)

g. Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-19-99)

i. To have paid or incurred reasonable job related expenses while performing services as employees; and (3-19-99)

ii. To account adequately to the employer for these expenses; and (3-19-99)

iii. To return any excess reimbursement or allowance. (3-19-99)

h. Payments for employee travel expenses, provided: (3-19-99)

i. Payments are job related expenses while performing services; and (3-19-99)

ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and (3-19-99)

iii. Records for days of travel pertaining to per diem payments are verifiable. (3-19-99)

i. Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-19-99)

j. Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Sec. 72-1328, Idaho Code. (3-15-02)

04. Treatment of Limited Liability Companies. For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for

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federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. (4-5-00)

05. Domestic Employment. Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority" includes, but is not limited to, services rendered by: (3-15-02)

- a. Cooks; (3-15-02)
- b. Waiters; (3-15-02)
- c. Butlers; (3-15-02)
- d. Maids; (3-15-02)
- e. Janitors; (3-15-02)
- f. Laundresses; (3-15-02)
- g. Furnacemen; (3-15-02)
- h. Handymen; (3-15-02)
- i. Gardeners; (3-15-02)
- j. Housekeepers; (3-15-02)
- k. Housemothers; and (3-15-02)
- l. In-home caregivers. Ref. Sec. 72-1315, Idaho Code. (3-15-02)

06. Casual Labor. Services performed by an individual not in the course of the employer's trade or business who earns less than fifty dollars (\$50) per calendar quarter per service provided and is not regularly employed by that employer to perform such service, are exempt from unemployment insurance coverage. Ref. Sec. 72-1316A(19), Idaho Code. Domestic employment exempt as casual labor may not be exempt if the employer is covered for such service under Section 72-1315(8), Idaho Code. The term, "services not in the course of the employer's trade or business", refers to services that do not promote or advance the trade or business of the employer. The casual labor exemption found under Section 72-1316A(19), Idaho Code, does not apply to services performed for corporations because all services performed for a corporation are considered to be in the course of the trade or business of the corporation. (4-11-06)

07. Willfully. When applied to the intent with which an act is done or omitted, willfully implies simply a purpose or willingness to commit the act or make the omission referred

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to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It is more nearly synonymous with “intentionally,” “designedly,” “without lawful excuse,” and therefore not accidental. Ref. Sec. 72-1372, Idaho Code. (____)

(BREAK IN CONTINUITY OF SECTIONS)

112. DETERMINING STATUS OF WORKER.

01. Determining if Worker Is an Employee. In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors ~~shall~~ may be considered: ~~(3-19-99)~~(____)

a. The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-19-99)

b. Statements made to the department; (3-19-99)

c. Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-19-99)

d. Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-19-99)

02. Determining if Worker Is an Independent Contractor. If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an “independent contractor” pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. (3-19-99)

03. Proving Worker Is Free from Control or Direction in His Work. To meet the requirement of Section 72-1316(4)(a), Idaho Code, ~~# the alleged employer must be proven~~ that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors ~~shall~~ may be considered in this determination: ~~(3-19-99)~~(____)

a. Whether the alleged employer has control over: (3-19-99)

i. The details of the work; (3-19-99)

ii. The manner, method or mode of doing the work; and (3-19-99)

iii. The means by which the work is to be accomplished, but without reference to

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having control over the results of the work. (3-19-99)

b. ~~The freedom from~~ Whether the worker was free from the alleged employer's direction and control ~~must exist~~ both in theory (under a contract of service) and in fact; ~~and~~ (4-11-06)()

c. ~~The~~ Whether the alleged employer ~~must demonstrate that it~~ lacked a right to control the worker; (4-11-06)()

d. Whether the alleged employer has direction or control where the worker performs services under the alleged employer's license, permit, or certificate, acquired pursuant to federal, state or local laws and/or regulations, and the employer under such laws is required to direct and control the activities of the worker; and ()

e. Other factors which, viewed fairly in light of all the circumstances in a given case, may indicate the existence of or lack of the employer's exercise of direction or control over a worker's performance of his work. ()

04. Proving Worker Is Engaged in Independently Established Business. To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors ~~shall~~ may be considered in this determination: (3-19-99)()

- a. Skills, qualifications, and training required for the job; (3-19-99)
- b. Method of payment, benefits, and tax withholding; (3-19-99)
- c. Right to negotiate agreements with other workers; (3-19-99)
- d. Right to choose sales techniques or other business techniques; (3-19-99)
- e. Right to determine hours; (3-19-99)
- f. Existence of outside businesses or occupations; (3-19-99)
- g. Special licensing or regulatory requirements for performance of work; (3-19-99)
- h. Whether the work is part of the employer's general business; (3-19-99)
- i. The nature and extent of the work; (3-19-99)
- j. The term and duration of the relationship; (3-19-99)
- k. The control of the premises; (3-19-99)
- l. Whether the worker has the authority to hire subordinates; (3-19-99)
- m. Whether the worker owns or leases major items of equipment or incurs substantial

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unreimbursed expenses, provided, that in a case where a worker leases major items of equipment from the alleged employer: (3-19-99)

- i. The terms of the lease; and (3-19-99)
- ii. The actions of the parties pursuant to those terms must be commercially reasonable as measured by applicable industry standards. (3-19-99)
- n. Whether either party would be liable to the other party upon peremptory or unilateral termination of the business relationship; and, (3-19-99)
- o. Other factors which, viewed fairly in light of all the circumstances in a given case, may indicate the existence or lack of an independently established trade occupation, profession or business. (3-19-99)

05. Meeting Criteria for Covered Employment. A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-19-99)

06. Evidence of Contractual Liability for Termination. For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Sec. 72-1316(4), Idaho Code. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

134. PROFESSIONAL EMPLOYER ORGANIZATIONS.

A professional employer organization shall fully comply with the requirements of the Professional Employer Recognition Act, Chapter 24, Title 44, Idaho Code in order to be eligible for any transfers of experience rating as allowed by Section 72-1349B, Idaho Code. (3-15-02)

01. Methods of Reporting. To report the wages and employees covered by the professional employer arrangement between a professional employer and client, professional employers and their clients shall make reports to the Department in one (1) of the following ways, subject to the conditions in Subsections 134.02 through 134.06 of this rule: (3-15-02)

a. Report the workers included in the professional employer arrangement under the employer account number of the professional employer and transfer the rate of the client to the professional employer; or (3-15-02)

b. Report the workers included in the professional employer arrangement under the employer account number of the client without an experience rate transfer. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

02. Joint Transfer of Experience Rate. In order to effect a transfer of a client's experience rate into the experience rate of a professional employer organization, both the client

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and the professional employer organization shall jointly apply for the transfer of the experience rate within the same timeframes as required of employers by Section 72-1351(4~~5~~), Idaho Code, from the date of the contract entered into between the professional employer organization and the client required by Section 44-2405, Idaho Code. Failure to submit a timely joint request for transfer of experience rate shall result in the professional employer organization reporting wages for the client under the employer account number of the client. Ref. Sec. 72-1351(4~~5~~), Idaho Code. (7-1-05)()

03. Partial Transfers of Experience Rate Prohibited. In the event that a client and a professional employer organization jointly apply to transfer the experience rate of the client into that of the professional employer, the client's entire experience rate and factors of experience rate shall be transferred into that of the professional employer, and no partial transfers of experience factors or the experience rate shall be allowed. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

~~**04. Joint Application.** If the professional employer organization elects to report the workers assigned to a client under the experience rate account of the professional employer a joint application signed by the professional employer organization and the client employer must be submitted within one hundred eighty (180) days of the contract between the professional employer organization and the client. If the application is not received within this time frame, the workers assigned to the client employer must be reported under the experience rate account of the client without an experience rate transfer. Ref. Sec. 72-1351, and 72-1349B, Idaho Code.~~ (4-11-06)

054. Partial Reporting of Workers. If some of the client's workers are included in the professional employer arrangement and some are not included, and the professional employer organization and the client elect to report the workers included in the professional employer arrangement under the employer account number of the client, then only one (1) quarterly report shall be remitted to the Department, which shall list or include all the client's workers whether or not included in the professional employer arrangement. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

065. Combined Wages or Services for Purposes of Coverage. If a client employer has employees or employment, or both, that does not independently meet the coverage or threshold requirements necessary to constitute covered employment, such employees, services or employment shall nonetheless be deemed to meet the coverage requirements of the Employment Security Law if, in combination with other employees, employment or services of such other employees of the professional employer organization or any of its clients, such wages, services or employees do jointly meet coverage requirements. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

263. DETERMINATION OF REPORTABLE QUARTERS.

An employer shall be covered for all four (4) quarters in the calendar year in which the employer becomes a covered employer as well as for all four (4) quarters in the succeeding calendar year. Employers are not required to file quarterly reports until meeting the coverage criteria pursuant to Section 72-1315, Idaho Code. Upon becoming a covered employer within a calendar year, the

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quarterly report(s) for the quarter(s) prior to the employer becoming covered shall be filed with the quarterly report for the quarter in which the employer became covered. Quarterly reports for the periods subsequent to coverage shall be filed when due after the end of each quarter. Ref. Sec. 72-1315 and 72-1337, Idaho Code. ()

2634. -- 274. (RESERVED).

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IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.02.01 - IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (ICDBG)

DOCKET NO. 09-0201-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-4702, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There are no changes to the pending rule. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the September 6, 2006 Idaho Administrative Bulletin, Volume 06-9, pages 40 through 56.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dianna Clough, Community Development Manager, (208) 334-2650 ext. 2140.

DATED this 6th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 67-4702, Idaho Code.

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Docket No. 09-0201-0601

Idaho Community Development Block Grant Program (ICDBG)

PENDING RULE

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These proposed changes to IDAPA 09.02.01 are intended to clarify or change inaccurate terminology and grant application requirements and delete references that do not comply with federal HUD program regulations.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The changes are being made to IDAPA 09.02.01 to comply with changes to federal HUD program regulations, legislative committee requests and to clarify and make rules consistent with other program requirements.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no impact on the State General Fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is in response to federal program regulations and legislative committee requests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dianna Clough, Community Development Manager, (208) 334-2650 ext. 2140.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this August 2, 2006.

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Dianna Clough
Community Development Manager
Department of Commerce and Labor
State Street Office
700 W. State Street, Boise, ID 83720-0093
(208) 334-2650 ext. 2140 / (208) 334-2631 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

040. SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES.

01. Economic Development Activities. Grant funds may be used for economic development activities which directly assist a specific business firm. In authorizing activities, the Department will take into account the amount of permanent employment to be generated which is available to low and moderate income persons, the necessity of the assistance or activity to stimulate private investment and the degree of impact on the economic conditions of the applicant. (7-6-94)

02. Eligible Activities. The following are eligible activities that may be carried out: (7-6-94)

a. Acquisition, construction, reconstruction, or installation of publicly-owned commercial or industrial buildings and structures, and other publicly-owned real property equipment and improvements, including public facilities, utilities, and other on site improvements, including railroad spurs, electrical, gas and telephone services. Such activities may be carried out by the grantee, sub-grantee recipient, or private nonprofit firms. Rehabilitation of privately-owned commercial or industrial buildings is eligible under Subsection 040.02.b.; or Subsection 051.01. ~~(3-20-97)(9-1-06)T~~

b. A project may include the provision of direct financial assistance to private-for-profit businesses including, but not limited to, assistance through grants, loans, loan guarantees, interest supplements, or technical assistance and other forms of support, for any eligible activities ~~necessary or appropriate~~ to carry out an economic development project, excluding these described as ineligible in Subsection 052.01. In order to ensure that any such assistance does not unduly enrich the for-profit business, an analysis shall be conducted to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project as described in 24 CFR Part 570.482(e) and (f). ~~The analysis shall document any factors considered in making the determination that the assistance is "necessary or appropriate" to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the grantee or through a sub-grantee;~~ (7-6-94)(9-1-06)T

c. ~~Other activities eligible under Section 022 of these rules which are necessary or appropriate to carry out an economic development project; and~~ (7-6-94)

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~~d. When the grantee determines such ineligible activities listed in Subsection 052.02 are necessary or appropriate to achieve its community development strategy. (7-6-94)~~

041. -- 044. (RESERVED).

045. SUB-GRANTS TO NONPROFIT ORGANIZATIONS.

01. Eligible Activities. A grantee may subgrant ICDBG funds to any of the types of sub-~~grantees~~ recipients specified below, to carry out a neighborhood revitalization or community economic development project. Such a project may include any eligible activity under these rules and ineligible activities listed in Subsection 052.02, but not those described as ineligible in Subsection 052.01, ~~when the grantee determines that such activities are necessary or appropriate to achieve its community development objectives. (7-6-94)(9-1-06)T~~

02. Grantee Responsibilities. Grantees are wholly responsible for ensuring that ICDBG funds are utilized by sub-~~grantees~~ recipients in a manner in compliance with the requirements of these rules and the other applicable federal, state or local laws. Grantees remain responsible for carrying out the environmental review and clearance responsibilities. ~~(7-6-94)(9-1-06)T~~

03. Sub-~~Grantee~~ Recipient Eligibility. Sub-~~grantees~~ recipients eligible to receive grants under ~~this~~ Section 045: ~~(7-6-94)(9-1-06)T~~

a. A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit (nonprofit) basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of its membership, clientele or governing body are residents of the neighborhood where activities assisted with ICDBG funds are to be carried out. A "neighborhood" is: a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances or other local documents as a neighborhood; or the entire jurisdiction of a unit of general local government which is under twenty-five thousand (25,000) population. (7-6-94)

b. Section 301(d) Small Business Investment Companies. A Section 301(d) Small Business Investment Company is an entity organized pursuant to Section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making. (7-6-94)

c. Local Development Corporations. A local development corporation is: an entity organized pursuant to Title VII of the Headstart, Economic Opportunity and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.); an entity eligible for assistance under Section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696); other entities incorporated under state law whose membership is representative of the area of operation of the entity (including non-resident owners of businesses in the area) and which is similar in purpose, function and scope to those specified in Subsection 045.03.a.; or a state development entity eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695). (7-6-94)

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d. Colleges and Universities. An institution of higher education having a demonstrated capacity to carry out eligible activities for the benefit of the grantee. (7-6-94)

(BREAK IN CONTINUITY OF SECTIONS)

066. INVITATION TO SUBMIT APPLICATION ADDENDA.

For public facility, housing and ~~economic development~~ downtown revitalization applications, the Council will review the staff recommendation and the information presented. The Council will assign their points and will direct the Department to invite the highest rated applicants to submit application Addenda, ~~if required and if funding is available.~~ (4-11-06)(9-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

072. FORMAT.

An Application shall be submitted on eight and one-half inch (8-1/2") by eleven inch (11") white paper. It may be printed on both sides of the paper. Maps and larger sheets shall be folded to eight and one-half inch (8-1/2") by eleven inch (11") size. Left and right margins shall be one (1) inch. The text shall be typed single-spaced with double spaces between paragraphs. Pages shall be numbered. The types of headings and numbering systems are optional to the applicant. Supporting documents should be noted and placed in an appendix. ~~All Applications shall be bound. Type of binding is optional to the applicant.~~ The original and an electronic Application and the addendum, if required, shall be submitted to the Department of Commerce and Labor as prescribed in the ICDBG Application Handbook. (4-11-06)(9-1-06)T

073. (RESERVED).

074. SECTIONS.

The Application shall consist of the following sections: (7-6-94)

01. Cover. The cover shall contain "An application for an Idaho Community Development Block Grant by the _____ (City/County) of _____ (Name) _____ Date: _____". (one (1) page) (7-6-94)

02. Cover Letter. A cover letter signed by the Mayor or the Chairman of the Board of County Commissioners on official stationery. This is the official letter of application for a grant. (one (1) page) (7-6-94)

03. Table of Contents. (one (1) page) (7-6-94)

04. ICDBG Application Information Form. Fully completed and signed by the applicant. (one (1) page) (7-6-94)

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05. Threshold Factors. The first four (4) factors must all be answered in the affirmative before an Application is to be reviewed and ranked. For public facility, housing and downtown revitalization projects an Application shall include ~~only~~ Subsections 074.05.a. through 074.05.d. An Addendum, where required, shall include Subsections 074.05.e. through 074.05.g. All other application types must include Subsections 074.05.a. through 074.05.g.

~~(3-19-99)~~(9-1-06)T

a. The applicant must be an eligible applicant (Section 012). Describe how the applicant meets the eligibility criteria. If this is a joint or in-behalf-of application, describe agreements and arrangements for managing the grant and the project. (7-6-94)

b. The project shall be an eligible activity(ies). Describe why the project and the various activities are eligible according to the rules in Section 022. (7-6-94)

c. The applicant shall adopt a citizen participation plan and shall conduct a public participation process. Applicants shall submit a copy of the Citizen Participation Plan and results of citizen involvement in developing the project. A copy of the Citizen Participation Plan must be submitted with the Application. An ICDBG may be awarded only if the grantee certifies that it is following a detailed citizen participation plan which: provides for and encourages citizen participation, with particular emphasis on participation of persons of low and moderate income who are residents of slum and blight areas or provides for participation of residents in low and moderate income neighborhoods as defined by the applicant; provides citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed use of funds; provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including, at least, the development of needs, the review of proposed activities, and review of program performance. Hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for persons with disabilities; provides for a timely written answer to written complaints and grievances, within fifteen (15) working days where practicable; and identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. (3-19-99)

d. At least one (1) public hearing is required to permit public examination and appraisal of the Application. Public hearings shall be scheduled in ways and at times to provide for full participation of citizens. The building or facility must be accessible to persons with disabilities. All information presented in the hearings shall also be available, upon request, in a form usable by persons with disabilities. Proper notification shall be given by a public advertisement in a local newspaper no less than seven (7) days prior to the meeting date. The seven (7) days shall be counted beginning the date the advertisement appears and ending the day before the date of the hearing. The notice shall include: a brief description of the proposed project; the amount of funds being requested; the time and place of the public hearing, including a statement that the hearing will be held in a handicapped accessible facility; notification that both written and verbal comments will be accepted; and a description of the availability of services for persons with disabilities, upon request. It is recommended the applicant also post notification of the public hearing at various public locations and use other media notices of the hearing. At a minimum, applicants shall provide in the minutes of the meeting, evidence the following occurred

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at the public hearing: The Application and Application Handbook were available for review; the amount of funds available for local community development and housing activities was discussed; the range of activities to be undertaken was presented including community impact and benefit to low and moderate income (LMI) persons; verification that citizen's comments and views on the proposed Application were considered prior to submittal and, if determined appropriate, a description of how the Application was modified; a copy of the public notice, minutes and a list of those attending the public hearing(s); a description of any plans for the project regarding citizen participation, i.e., the formation of a citizen's advisory committee; and a description of any assistance for persons with disabilities requested and provided. (3-20-97)

e. The applicant shall have the administrative capacity to administer the grant. This means having completed the procurement process for a Department-approved grant ~~manager~~ administrator in accordance with ~~the~~ Section 212. The grant ~~manager~~ administrator shall be included in project development and Application writing efforts. ~~(3-20-97)~~(9-1-06)T

f. The applicant shall have adopted a Fair Housing Ordinance or resolution. This ordinance or resolution must have been adopted and publicly advertised within the twelve (12) month period preceding the Addendum deadline date for public facility, housing and downtown revitalization projects and the twelve (12) month period preceding the application deadline date for senior/community center, imminent threat and economic development job documentation projects. Once the Fair Housing Resolution or Ordinance has been adopted, applicants do not have to re-adopt the Resolution or Ordinance. The applicant will be required to show documentation the Resolution or Ordinance was published within the previous twelve (12) month period. ~~(3-19-99)~~(9-1-06)T

g. The applicant shall either certify it will follow the Idaho Department of Commerce and Labor's Anti-displacement Plan or have adopted an Anti-Displacement and Relocation Plan. If the applicant adopts its own plan, the ordinance or resolution must have been publicly advertised within the twelve (12) month period preceding the Addendum deadline date for public facility, housing and downtown revitalization projects and the twelve (12) month period preceding the application deadline date for senior/community center, imminent threat and economic development job documentation projects. Once the Anti-Displacement and Relocation Plan has been adopted, applicants do not have to re-adopt the Plan. The applicant will only be required to show documentation the Plan was published within the previous twelve (12) month period. ~~(4-11-06)~~(9-1-06)T

06. General Project Description. This is the critical section of the Application. It should include enough information for the reviewer to clearly understand the community, its needs, the project, and how the grant will help to solve the community problem. The information in each ranking section should substantively expand upon the project description. The narrative should, ~~in three (3) pages,~~ succinctly describe the following items: a description of the community as to size, location and economy; a thorough assessment of all the community's needs and how the proposed project is a priority in comparison with the other needs addressed. The applicant should also include a description which discusses how the existing condition came about, the number of people affected, and the seriousness of the problem(s); the particular project that is being proposed shall be described in detail. Describe the project, the various components, anticipated costs, schedule of activities, maps showing the location of the project to the community (detailed enough to locate it by car) and a map of the boundaries of the project area.

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This description shall be detailed enough that it can be used to write a contract scope of work; describe the benefits of the project, how it solves the identified need, and how it will enhance the community and its economy. Provide a demographic profile of the persons to benefit. This shall include gender, minority status, persons with disabilities, and female head of household. Describe how the project meets the state objectives of the ICDBG program (see Sections 000, 010, and 011); and if program income is expected to be generated, a re-use plan must be developed according to Section 175. ~~(3-19-99)~~(9-1-06)T

07. ICDBG Budget Form Fully Completed by the Applicant. (one (1) page)
(7-6-94)

08. Assurances. The applicant shall sign the Assurances Form certifying that it will comply with the following federal laws and regulations: National Environmental Policy Act of 1969; Civil Rights Act of 1964 Pub.L 88-352; Civil Rights Act of 1968 Pub.L 90-284; Age Discrimination Act of 1975; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended and the implementing regulations at 49 CFR Part 24; Rehabilitation Act of 1973, Section 504 “Handicapped Accessibility”; Housing and Community Development Act of 1974 as amended Pub. L 93-383; Davis-Bacon Act (40-USC 276a--5); Historic Preservation Act; Anti-Lobbying Certification; Excessive Force Certification; and Section 106 of the Housing and Urban Recovery Act of 1983, certifying they will: minimize displacement and follow a residential anti-displacement and relocation assistance plan, affirmatively further fair housing, provide citizen participation, not use assessments or fees on low and moderate income owner occupants to recover capital costs of ICDBG-funded public improvements; Prohibition of Use of Assistance For Employment Relocation, Section 588 of the Quality Housing and Work Responsibility Act of 1998 Pub. L 105-276. (one (1) page). (3-30-01)

09. Review and Ranking Narrative. The applicant shall address each point category in the order given in the review and ranking section of the applicable grant category, referenced below. If a particular point category is not applicable or not selected, it should be indicated.
(7-6-94)

- a.** Economic Development Grants: (4-11-06)
 - i. Infrastructure (Section 096). (7-6-94)
 - ii. Downtown Revitalization (Section 097). (7-6-94)
- b.** PFH (Sections 083 through 087) and SR (Section 101) Grants: (7-6-94)
 - i. Program Impact and Eligible Activity Point Form. (4-11-06)
 - ii. National Objectives. (4-11-06)
 - iii. Project Categories. (4-11-06)
 - iv. Advisory Council Points Narrative. (4-11-06)

10. Additional Information from Applicant (Appendix). Maps, letters of support,

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technical studies and appropriate background documentation should be placed in this section and bound into the Application (no page limit). (7-6-94)

(BREAK IN CONTINUITY OF SECTIONS)

090. PROJECT CATEGORIES.

Two hundred and twenty (220) points. PFH Applications shall address each of the categories below. The project description and its benefits should be discussed in previous sections. This section is a measure of the preparedness of the project and the community to undertake the project. To earn points, the applicant must demonstrate that the appropriate actions, procedures, agencies, permits, financing and inspections to initiate and complete the project were discovered and show how much has been completed. The object is to have well thought out projects which will then be quickly executed if funded. The items identified in the following categories must be related to each other. (3-30-01)

01. Planning, Previous Actions and Schedule (one hundred and eighty (180) points). According to the categories listed below, the applicant shall describe and document the process used to plan the project and describe the components of the project. The completeness of the process and project detail earn more points. (4-11-06)

a. Design Professional (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed a design professional selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, proof of published notice if applicable, and completed evaluation rating sheets must be submitted to receive full points. (4-11-06)

b. Grant Administration (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed the administrator selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, solicitation process, and completed evaluation rating sheets must be submitted to receive full points. (4-11-06)

c. Plan/Studies (twenty (20) points). A maximum of twenty (20) points will be awarded in this category if the applicant documents a plan or a study has been completed which includes a survey of the existing condition of the system or facility, develops and screens alternatives to enable the system to meet future needs, selects a recommended alternative, and evaluates the potential impact of the project on the environment. For pre-fab buildings, provide a letter from local building officials that the building meets state of Idaho building, electrical, and plumbing codes. Include additional information by project type: (4-11-06)

i. Water and sewer system projects. A conditional approval issued by DEQ on the facilities study or the project's specification and drawings. (4-11-06)

ii. Health care facility projects. A letter of intent submitted to the Idaho Bureau of

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Facilities Standards describing the proposed scope of work. Provide a copy of the letter and any response from the Bureau of Facilities Standards. (4-11-06)

iii. Road and transportation system projects. Conditional approval of construction plans by the Idaho Transportation Department or local highway district. (4-11-06)

iv. Housing projects. Project meets the community's comprehensive plan and zoning ordinance. Also, completed a financial performance and management plan. (4-11-06)

v. Fire or EMT station projects. A public works or design professional facilities review. The review shall include survey of existing condition of the building (if applicable), an analysis of costs including rehabilitation costs versus new construction, site location consideration including environmental issues, existing building problems, and the need for the size of the facility. (4-11-06)

d. Environmental Scoping (ten (10) points). A maximum of ten (10) points will be awarded if the applicant or sub-recipient has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook and mailed out environmental information request letters before submission of application. (4-11-06)

e. Agency Viability (thirty (30) points). A maximum of thirty (30) points will be awarded in this category if the applicant documents the following per project type: (4-11-06)

i. Sewer or water projects. Completion of ICDBG financial viability worksheet with the utility rate reviewed by at least one (1) of the following: The USDA Rural Development, Boise State University Environmental Finance Center, the Rural Community Assistance Corporation, or the Idaho Rural Water Association. (4-11-06)

ii. Health care, transportation, housing, fire/EMT, or other projects. The applicant's or sub-recipient's viability will be based on having the following components: A lawful governing body, completion of ICDBG financial viability profile, a stable funding source and positive cash flow, and capital improvement and facility management plans. (4-11-06)

iii. Youth center projects. Projects must ~~be modeled after the Boys and Girls Club of America and~~ assist youth ages six (6) to eighteen (18) in developing skills to overcome challenges and become responsible leaders. The applicant or sub-recipient must provide information on management and operation of the center, outreach activities, a cost analysis of rehabilitation versus new construction and document that local operating funds are committed.

~~(4-11-06)~~(9-1-06)T

f. Property Acquisition (twenty (20) points). A maximum of twenty (20) points shall be awarded if the applicant or sub-recipient has achieved project site control. (4-11-06)

i. The applicant or sub-recipient has ownership of the property including easements or right of way permits. Identify if there are existing buildings on the property and whether or not businesses, individuals, or farms will be displaced and provide documentation of site control; or (4-11-06)

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ii. If property (land, buildings, rights of way, easements) is not secured but is identified on a plat map five (5) points will be awarded. Identify if individuals or businesses, including farms will be displaced. (4-11-06)

g. Funding Commitments (forty (40) points). A maximum of forty (40) points will be awarded if one hundred percent (100%) of match funds are committed to the project. A commitment letter must be included with the application addendum. A support letter is not a commitment. If match is a bond, provide documentation the bond has passed and identify who will buy it. (4-11-06)

h. Schedule (five (5) points). A maximum of five (5) points will be awarded in this category if the dates to start and complete construction have taken into account weather conditions, other funding availability, environmental mitigation issues, real estate site control, and bidding time frame. (4-11-06)

i. Administrative Capacity (fifteen (15) points). A maximum of fifteen (15) points will be awarded in this category. (4-11-06)

i. ICDBG project track record and general stability of applicant and sub-recipient. Review may include financial audit reports, board make-up, staff turnover and recall elections (five (5) points). (4-11-06)

ii. Completion of Section 504 Self Evaluation and Transition plan. Submit the transition plan and the name of the ADA coordinator to certify which elements have been completed (five (5) points). (4-11-06)

iii. Document that Fair Housing Accessibility Standards have been adopted either separately or inclusively with the most current building code utilized by the applicant (five (5) points). (4-11-06)

02. Cost Analysis (forty (40) points). Cost estimates for the project should be an accurate and realistic analysis of the administrative, legal, accounting, engineering or architectural services, property acquisition, construction and closeout costs. The various sources of funding should be assigned to the appropriate parts of the project. In order to receive points, construction costs will need to be: (4-11-06)

a. Identified by a licensed design professional's cost estimate within four (4) weeks of the application due date; (4-11-06)

b. Completed Project Cost Estimate. Estimate should reflect: (4-11-06)

i. Acquisition costs including appraisals, land, relocation, and closing costs; (4-11-06)

ii. Construction costs including divisions 1 - 16 as described in the most recent MASTERFORMAT, Davis Bacon wage rate, overhead, profit, contingency, bonding, permits; (4-11-06)

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- iii. Design professional fees including design fees, construction administration, and reimbursable fees; (4-11-06)
- iv. Grant administration fees including writing and administration; (4-11-06)
- v. Soft costs including soil studies, market study, environmental; and (4-11-06)
- vi. Financing expenses. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

096. REVIEW AND RANKING NARRATIVE FOR BUSINESS EXPANSION PROJECTS.

The following are the review and ranking narrative requirements for those projects which assist business expansion through the provision of infrastructure and creation of jobs. The following minimum criteria must be included in the application by the application deadline in order for staff to review and rank the project and recommend it to the Economic Advisory Council for consideration. (3-30-01)

01. Minimum Criteria. (7-6-94)

a. The project must meet the national objective of benefiting LMI persons through job creation. Fifty-one percent (51%) of all the new jobs created or retained must be held by or made available to a member of a low and moderate income family. (LMI as defined in Section 016). Family income must be certified by the employee at time of hire and must be able to be verified or may be documented through a Department of Commerce and Labor screening referral agency. (3-19-99)

b. The applicant must certify compliance with applicable federal circulars A-87, A-110, and A-122 and meet the necessary assurances as listed in Subsection 074.08 as applicable. (4-11-06)

c. A public hearing shall be held on the Application in accordance with Subsection 074.05.d. (7-6-94)

d. The project may qualify as a Special Economic Development Project under Subsection 040.02.a. ~~If the project qualifies under Subsection 040.02.b., a determination of Necessary or Appropriate is required~~ and 040.02.b. if the project meets the Public Benefit Standards described in 24 CFR Part 570.482 (e) and (f). ~~(7-6-94)~~(9-1-06)T

e. Attach an eight and one-half inch (8-1/2") by eleven inch (11") map showing the location of the proposed project in the community. Attach a site plan of the proposed project showing existing and proposed improvements both business and infrastructure; existing and proposed land uses in the surrounding area and natural features and conditions on the site and nearby. (3-20-97)

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f. Attach a brief analysis of the business to be assisted, including the market for the product/services to be produced, the business' position in the market, and the financial and managerial capabilities of the business(es) to be assisted. This should also include financial statements and balance sheets for the business(es) to be assisted indicating sales, income, and net position for the prior three (3) years, and the names and experience of senior managers of the business. (4-11-06)

g. Attach a letter of commitment from the business(es) stating their agreement to be part of the grant project, their ability to accomplish their expansion, their understanding of and compliance with all applicable federal regulations, their understanding of and compliance with the payback liability if the jobs creation does not meet federal standards; and their willingness to make available all records and information necessary to document all jobs created by completing and signing the Grant Assistance Agreement and Certification of Compliance with Grant Conditions. (4-11-06)

h. Attach a description of the type and number of all the jobs to be created, a calculation of fulltime equivalents (FTE), and a beginning payroll of the business(es) at the location of the proposed project, a detailed description of the hiring process and any training to be provided. The information should include both current job information and the job creation projected for two (2) years beyond the completion of the grant funded construction. If training is necessary, a training plan and schedule outlining the responsibilities must be included in the application. A description of the quality of new and retained jobs shall be included. A description of the median annual income and fringe benefits package for new or retained jobs shall be provided. (4-11-06)

02. Ranking Criteria (one thousand (1,000) points possible). (7-6-94)

a. Direct new or retained jobs, in fulltime equivalents (FTE's), created within two (2) years of grant construction completion. Net new jobs are those created as a result of the ICDBG, over and above employment at the business site prior to the grant, and which do not include relocated jobs from the assisted business in the same labor market area. Retained jobs are those that would be lost without the ICDBG assistance. A job creation cost of more than ten thousand dollars (\$10,000) ICDBG per job will not be considered. If jobs are not being created or retained, a project cannot be funded. (4-11-06)

b. Quality of New or Retained Jobs (one hundred (100) points). Points in this category are assigned based upon a comparison of the full time equivalent (FTE) wages or salaries created (excluding benefits, and the average county salary as determined by the most recent quarterly Idaho Department of Commerce and Labor survey. To convert part time or seasonal positions, take the total number of hours of employment created for a given pay rate and divide by one thousand five hundred sixty (1,560). If the average county wage exceeds the state average wage; comparison with the state average will be used. The grantee will be awarded points based upon the percentage of FTE's exceeding the state or county average salary. The formula is: Percentage of jobs above state or county average salary x one hundred (100) = Wage Quality Points. (4-11-06)

c. Fringe Benefits (one hundred (100) points). The businesses creating or retaining

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jobs as a result of ICDBG assistance shall document their fringe benefit plans. Points will be given as follows: fifty (50) points for an employer funded health plan and fifty (50) points for an employer funded pension plan. The business must provide both to receive full points. (4-11-06)

d. Business Risk and Management (zero (0) to one hundred twenty-five (125) points). The probability of achieving the projected jobs and payroll within one (1) and two (2) years, as determined by the Department. The determination may be made on the basis of: the business plan and schedule, the financial position and a credit analysis of the business; the performance record of senior management of the business project; and other criteria reasonably required by the Department. Projects receiving less than seventy-five (75) points in this category will be eliminated from further consideration. (4-11-06)

e. Planning, Schedule and Cost (one hundred and seventy (170) points possible). Describe planning efforts to enhance economic development. A detailed and reliable cost estimate and a project construction schedule is required of all Applications. Cost analysis and schedule will receive equal emphasis. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

i. Planning (fifty (50) points). Describe planning efforts to identify and detail all steps related to the implementation of the entire project. Identify all participants in the process. Describe all the partnerships and relationships involved in implementing the project. This will include local government actions, the business actions, other agency and utility actions, real estate, environmental, legal, financial and grant considerations. (4-11-06)

ii. Schedule (fifty (50) points). A detailed and reliable schedule of all actions identified in the plan. Also a separate grant funded project construction schedule is required of all Applications. (4-11-06)

iii. Cost (fifty (50) points). Detailed cost estimates of all actions, permits, construction, real estate, etc. should be prepared by an engineer or architect. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

iv. Environmental Scoping (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook. (4-11-06)

f. Minority Benefit (fifteen (15) points). Applicants for job creation projects that are for business expansion or retention shall receive minority points if the business documents minority hiring on their current payrolls. If the percentage of minority participation is equal to or greater than the county in which they are locating, they shall receive full points. (4-11-06)

g. Local Investment Leverage (maximum of one hundred (100) points). The total of all local match will be divided by the total of all local match plus the ICDBG amount requested to determine the percentage of local match in the project. This percentage will then be multiplied by one hundred (100) to determine the point value. Applicants shall state if there is a Revolving Loan

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Fund (RLF) available in their region and, if so, describe what attempts have been made to secure funds from the RLF for the project. Program Income from previous grants to be used in this project may be considered as local match. (4-11-06)

h. Distressed Areas (twenty (20) points). Maximum points will be given if the project is located in a historically underutilized business (HUB) zone. (4-11-06)

i. Existing Idaho Business (twenty (20) points). To qualify for points, a business must have a significant Idaho presence. (4-11-06)

j. Private Leverage (one hundred (100) points). The points in this category will be calculated by dividing the total of all private investment provided by the business in the project by the ICDBG amount requested and multiply it by one hundred (100). The business' private investment is the capital facilities, real estate and site development costs. Applicants shall provide documentation on the status of private investment, i.e. financing approvals. Payroll and start-up costs are not included in this calculation. (4-11-06)

k. Activities (twenty-five (25) points). Points will only be awarded for the percentage of ICDBG dollars committed to the acquisition, construction, or reconstruction of public infrastructure (Section 024); and for publicly-owned commercial building acquisition and/or rehabilitation for the purpose of assisting a business or businesses. (4-11-06)

l. Grant Management (twenty-five (25) points). If the grant funded activities are managed by the grantee, twenty-five (25) points will be awarded. Grantee management includes management under contract with a Department approved Grant Manager. (4-11-06)

m. Economic Advisory Council Evaluation (two hundred (200) points). The EAC will evaluate each Application on the basis of overall value, including its ability to make a significant impact on the Idaho economy and the commitment of the community to the project. The EAC evaluation process shall be prescribed in the ICDBG Application Handbook. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

101. REVIEW AND RANKING PROCESS.

The Application shall be reviewed according to the following point categories and shall be based upon the information submitted and any additional information requested by the Department. (one thousand (1,000) points possible). (7-6-94)

01. Physical Conditions (three hundred fifty (350) points). Points will be assigned to the needs of the center based upon the number of needs and the urgency of the needs. Department staff shall, upon review of the documentation and descriptions in the application, determine a rating from one (1) to three (3) based upon the criticalness and urgency of each of the following problems. The ratings will be totaled and ranked. Those Applications ranking the highest will receive the most points. ~~(The number of Applications divided into three hundred fifty (350) points equals the points per rank.)~~

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TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
		Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/ Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
Identified in Project Description Narrative	Identification of Problem	Critical 13	Urgent 2	Nice to Have 31
	Physical Conditions:			
	Structural Problems			
	Roof			
	Walls			
	Foundation			
	Floors			
	Weatherization			
	Expansion for adult day care			
	New Center			
	Other			
	Interior Problems:			
	Asbestos/lead based paint			
	Bathrooms			
	Access for persons with Disabilities			
	Electrical/plumbing /lighting			
	Heating/air conditioning			
	Fire safety			
	Unusable space			
	New Center			
	Unusable space			
	Other			
	Kitchen and Food Storage:			
	Health inspection			
	Capacity of dry storage			

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TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
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Identified in Project Description Narrative	Identification of Problem	Critical 13	Urgent 2	Nice to Have 31
	Capacity of cold storage			
	Equipment			
	New Center			
	Other			
	Access for Persons with Disabilities			
	Parking			
	Entry			
	Bathrooms			
	New Center			
	Other			
	TOTALS:			
		ASSIGNED RANKING		

~~(3-30-01)~~(9-1-06)T

02. Planning and Schedule (two hundred (200) points). Points will be assigned according to the apparent effort made to determine the needs of the center, the nature of the problems, the solutions, and the costs of the project and a realistic schedule for implementing the project. (7-6-94)

a. Pre-Planning (fifty (50) points). This is a measure of the effort made to quantify the problems through building code inspections, health inspections, and architectural and engineering review. (7-6-94)

b. Project Planning (fifty (50) points). This is a measure of the effort made to coordinate all of the various agencies that may be involved in funding and planning the project. Also included is all relevant information that all grant responsibilities and requirements have been included in the planning. (7-6-94)

c. Schedule (fifty (50) points). This is a measure of the effort to schedule all the project activities, including the different grant requirements and contractors that may be involved. (7-6-94)

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d. Costs (fifty (50) points). This is a measure of the effort to determine reasonable cost estimates for the various elements of the project. (7-6-94)

03. Benefits (one hundred fifty (150) points). (7-6-94)

a. Activities Provided (one hundred (100) points). This is a measure of how well the center is meeting the needs of its members, neighborhood, or community. It is based upon the number and quality of activities and services the center is providing on an annual basis. Service days will be calculated by taking the number of days an activity or service is offered during the course of the month multiplied by twelve (12). Activities can include health, recreational, social, educational, and transportation services. Quartile points will be assigned to this area.

TABLE 6 - "Ranking By Quartiles"	
Highest Quartile	One hundred (100) points
Second Quartile	Sixty (60) points
Third Quartile	Thirty (30) points
Fourth Quartile	zero (0) points

(3-30-01)

b. Low and Moderate Income and Minority Outreach Activities (fifty (50) points). This is a measure of existing or proposed efforts made to include low and moderate income and minority participation in the center's activities. (7-1-98)

04. Match (one hundred (100) points). Cash and in-kind donations which are committed to the project shall receive points according to the percentage committed up to the total points in the category of match. (4-11-06)

a. The sixty (60) points for cash match shall be assigned on a quartile basis by taking the percentage resulting from the division of cash match by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of cash match in the project. (3-30-01)

i. First Quartile -- sixty (60) points. (3-30-01)

ii. Second Quartile -- thirty (30) points. (3-30-01)

ii. Third Quartile -- fifteen (15) points. (3-30-01)

iv. Fourth Quartile -- zero (0) points. (3-30-01)

b. The forty (40) points for in-kind match shall be assigned on a quartile basis by taking the percentage in-kind match divided by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of in-kind match in the project. (3-30-01)

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- i. First Quartile -- forty (40) points. (3-30-01)
- ii. Second Quartile -- twenty (20) points. (3-30-01)
- iii. Third Quartile -- ten (10) points. (3-30-01)
- iv. Fourth Quartile -- zero (0) points. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

107. AWARD PROCESS.

The Department shall review the Applications submitted with the EAC during its ~~March~~ April meeting. The EAC, after reviewing the Applications, and staff recommendations, will assign the points and recommend Applications to the Governor for funding and standby status.

~~(4-11-06)~~(9-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

152. GRANT AWARD.

01. Funding Allocations. Each year the Department will receive an allocation from the Department of Housing and Urban Development. This allocation is derived from the formula contained in 42 USC, Sec. 5301, the Housing and Community Development Act of 1974, as amended. The allocation shall be generally divided in the following manner to establish target amounts for decision making by the Economic Advisory Council (EAC): first, one hundred thousand dollars (\$100,000) plus two percent (2%) of the total shall be reserved for the Department's administrative costs; second, one percent (1%) of the total shall be reserved for Technical Assistance ~~Grants~~; third, five percent (5%) or three hundred thousand dollars (\$300,000), whichever is less, of the total allocation shall be set aside for Imminent Threat (IT) grants; fourth, six percent (6%) or six hundred thousand dollars (\$600,000) whichever is less, of the total allocation, shall be set aside for Community Center (CC) or Senior Citizen Center (SR) grants; fifth, any program income, recaptured funds, or carryover funds from the previous fiscal years shall be added to the remainder; and finally, of the remainder, fifty percent (50%) shall be reserved for Public Facilities or Housing (PFH) grants and fifty percent (50%) for Economic Development (ED) grants. These targeted amounts may be more or less than the actual amount funded in each category depending on the needs and requests identified in the applications submitted and may shift according to Subsection 152.02.

~~(7-1-98)~~(9-1-06)T

02. Shifting of Funds. The above allocation divisions are to establish target amounts for decision making by the Economic Advisory Council (EAC). This division shall be made for the January EAC meeting. These targets may be modified at any time by the Department Director with the advice of the EAC depending on the needs and requests identified in the applications submitted. *The allocation system shall be updated quarterly before each quarterly EAC meeting*

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~~to include any additional recaptured funds, program income, or carryover funds. Of the allocation for ED grants, one quarter of the amount shall be set aside for funding full applications during the quarter following each EAC meeting. The quarterly set-aside amount may be modified at the discretion of the Department Director upon the advice of the Council. Any funds not awarded in the PFH category shall be shifted to the first quarter ED category.~~ If in any quarter there are surplus funds in the ED category, the Department Director, with the advice of the EAC, may shift funds back to the PFH or CC and SR category to fund standby projects. Otherwise, surplus funds not awarded to ED projects in a quarter shall be carried into the succeeding quarter ED set-aside. (7-1-98)(9-1-06)T

03. Standby Applications. At its quarterly meeting in April of each year, the Economic Advisory Council (EAC) may recommend PFH or CC and SR Applications for funding even though not enough funds are available to fund the project(s). These Applications become “standby projects”. Standby projects shall be eligible for funding should additional funds become available or surplus funds exist in the ED category. At any subsequent quarterly meeting, the Advisory Council may review and recommend a standby project to the Governor for funding. Standby status shall continue through the fourth quarterly meeting. Any standby projects not funded shall automatically be invited to submit an Addendum for the next Fiscal Year, thus bypassing the Application stage of the application process. However, the Application must remain eligible and must continue to meet all requirements of the program rules. The standby applicant shall update its Application during the Addendum process. (7-1-98)

04. Termination of Project Selection for Funding. (7-6-94)

a. If, during the period between the award of a grant and signing of a grant contract, a project loses its viability, its status of being selected for funding may be terminated by the Department. The Department shall, by letter, notify the applicant that in the judgment of the Department, the applicant’s project is no longer viable and that the applicant has a clearly stated period of time no less than fourteen (14) days to demonstrate the project’s viability. If viability cannot be demonstrated within the stated period of time the award of the grant status shall be considered terminated and the funds be made available for the next standby project. (7-6-94)

b. After a grant contract has been executed, the Department shall periodically evaluate the progress of the project. If, at any time, the project loses viability and/or cannot be completed as described in the Application, the Department shall, by letter, notify the grantee that the grant contract shall be terminated within a clearly stated period of time of no less than fourteen (14) days from the date of the letter. The grantee may, within the stated period of time, demonstrate substantial progress on the project and request the Department revoke the termination. If viability cannot be demonstrated within the specified amount of time, the grant shall be considered terminated. (7-6-94)

c. Loss of viability will be defined to include: the inability to secure the other project financing; the lack of due diligence to pursue the implementation of project requirements; the lack of local coordination with all funding and regulatory agencies; the inability to develop agreements necessary to manage the cash flow and ownership of the project where several different entities are involved in the project; and the inability to complete a project of the same general size and benefits as presented in the application. (7-6-94)

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05. Excessive Funds. In the event a project can be completed for less than the grant amount, the difference between actual project costs and the grant amount shall be reserved by the Department for standby projects, or added to the total of the next fiscal year allocation for distribution. The Department shall amend the grant contract to reflect the reduced costs. In extraordinary circumstances the excess funds may be used for an eligible activity which further enhances the project as described in the Application. Before the Department decides to allow the additional activity, the grantee must demonstrate the activity will provide an equal or greater benefit than the original project; it will increase the benefits to low and moderate income persons, it will be completed within the original time frame, and the additional activity will be completed with the excess funds. The grantee must also show completion of the original project, its objectives and benefits. (7-6-94)

06. Amendment of Project. A funded project as described in the Application shall not be changed without prior approval from the Department Director. Any amendment of the project shall be reviewed to determine if the project will retain its competitive ranking in the Application review and ranking system. Any amendment shall provide equal or greater benefits than the original project. In unusual circumstances, the Department Director may approve a grant amendment increasing the grant amount, provided unobligated funds are available. In unusual circumstances the Department Director may waive the ten percent (10%) limitation on administrative costs when, in the opinion of the Department, the complexity of the project warrants an increase. (7-6-94)

07. Allowable Costs. Once an applicant has been invited to submit an Addendum and prior to the effective date of a grant contract an applicant submitting an Addendum may obligate and spend out of local funds for the purpose below. If awarded a grant and after the effective date of the grant contract, the grantee may be reimbursed for these costs provided such locally funded activities are undertaken in compliance with the program requirements (including but not limited to procurement, financial, acquisition, environmental and the ten percent (10%) limitation on administrative costs). Other project costs shall not be incurred until the Special Terms and Conditions of the contract are completed by the grantee and the funds released by the Department. (See Section 080.) (7-6-94)

a. Planning, Design and Administration. Procure and proceed with administrative and architectural or engineering services, adopting the Fair Housing Resolution and the Anti-Displacement Plan, and having public hearings. (7-6-94)

b. Project Costs, such as: preliminary and final Engineering Design, preliminary and final Architectural Design, conducting the Environmental Assessment, and completing procedural requirements for acquisition, but not the cost of the property. (7-6-94)

08. Audit Requirements. All ICDBG projects shall be audited annually or biannually in accordance with Sections 50-1010 and 31-1701, Idaho Code, the Single Audit Act of 1984, the implementing regulations in OMB Circular A-133, and all applicable federal audit standards, and other applicable state laws. Audits shall include any management letters associated with the audit. The audit shall be submitted to the Legislative Auditors Office within thirty (30) days of completion. Grantees shall require sub-grantees to provide audits conducted according to applicable federal and state laws, regulations and standards. The grantee shall have these audits reviewed as part of the grantee's audit. This review shall be commented and noted in the audit

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report. This review shall opine that sub-grantees are in compliance with the applicable program laws, regulations, contracts, and standards. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

212. APPROVED GRANT ~~MANAGERS~~ ADMINISTRATORS.

01. **List of Approved ~~Managers~~ Administrators.** The Department requires all grantees to use approved grant ~~managers~~ administrators in all ICDBG projects. The Department will maintain a list of individuals which are approved by the Department to manage block grant projects. (7-6-94)(9-1-06)T

02. **Criteria.** The Department will use the following five (5) criteria to evaluate the qualifications of individuals desiring to become approved grant ~~managers~~ administrators: past record of experience with all types of grants; local government experience and background; record of past performance (if any) in administering ICDBG projects, including: monitoring findings, complaints, and commendations; timeliness of decision making, and successful coordination of projects; successful completion of a technical examination developed and administered by the Department, which may modify the examination to reflect program changes; and division staff review of a person's ability to successfully administer a grant, communicate, solve problems, apply regulations and requirements, and complete project and program requirements in a timely manner. (7-6-94)(9-1-06)T

213. GRANT ~~MANAGER~~ ADMINISTRATOR APPLICATION PROCESS AND ANNUAL REVIEW.

To apply for grant ~~manager~~ administrator certification status individuals shall submit an application to the Department. Applicants shall submit a letter requesting approval and a resume describing their experience and performance. The Department will review the application, the examination results and the Department's experience with the individual (Subsection 212.02). This application and review will occur on an annual basis beginning with the annual grant awards. The Department will determine when an individual has sufficient qualification and experience to be placed on the approved grant ~~manager~~ administrator list. (7-6-94)(9-1-06)T

214. SANCTIONS INVOLVING APPROVED GRANT ~~MANAGERS~~ ADMINISTRATORS.

The Department, in order to ensure the highest level of performance by approved grant ~~managers~~ administrators, may require remedial actions be undertaken upon receipt of a valid complaint or finding. Such recommendation will be made only after a timely and impartial investigation process in which the rights of all parties are protected. (7-6-94)(9-1-06)T

215. BASIS OF IMPOSING SANCTIONS.

The Department may take sanctions against an approved grant ~~manager~~ administrator as a result of any of the following actions: inability to complete project administration; findings of non-compliance or violation of federal or state rules and regulations; termination by a grantee of an administrative contract for cause; lack of cooperation in completing or complying with program

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requirements; or gross negligence.

~~(7-6-94)~~(9-1-06)T

216. PROCESS TO IMPOSE SANCTIONS.

01. Written Complaint. Upon receipt of a written complaint alleging conduct in the immediate preceding paragraph, or upon discovery of a problem through project monitoring, the Department shall immediately investigate the circumstances giving rise to such complaint, document the findings, and endeavor to make a determination of action within fifteen (15) days of the receipt of the complaint. The actions in Section 215 will serve as a conduct guide. (7-6-94)

02. Response. The approved grant ~~manager~~ administrator shall be given a copy of the complaint and the investigation report and have fifteen (15) days to respond to the complaint in writing. The Department shall then review the complaint and the response, and determine the appropriate sanction, if any, to be imposed. All parties to the complaint shall be notified in writing of the determination. ~~(7-6-94)~~(9-1-06)T

03. Administrative Appeal. Any person who is aggrieved by a decision regarding the imposition of sanctions shall be entitled to an administrative appeal pursuant to Title 67, Chapter 52, Idaho Code, Idaho Administrative Procedures Act. (7-6-94)

217. REMEDIAL ACTIONS.

The Department may decide to use any one (1) or all of the following remedial actions appropriate to approved grant ~~managers~~ administrators: issue a letter of warning to correct deficient actions; require mandatory ICDBG administrative training to maintain approved grant ~~manager~~ administrator status; remove an individual from the approved grant ~~managers~~ administrators list for a time period determined by the Department; require that corrective action be taken by the approved grant ~~manager~~ administrator to resolve the problem or conflict; or recommend initiation of appropriate legal proceedings in egregious situations. ~~(7-6-94)~~(9-1-06)T

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IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 09-0203-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-4702, 67-4715, 67-4717 and 67-4718, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There are no changes to the pending rule. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the September 6, 2006 Idaho Administrative Bulletin, Volume 06-9, pages 57 through 64.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Carl Wilgus, Assistant Deputy Director, (208) 334-2470 ext. 2149.

DATED this 6th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 67-4702, 67-4715, 67-4717 and 67-4718, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be

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scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed changes to IDAPA 09.02.03 will standardize and clarify the documentation of grant costs for Familiarization Tours (FAMS); eliminate fulfillment documentation requirements by allowing 10% of the total grant award to be used for fulfillment costs; raising the amount of total project costs to \$20,000 before grantees must utilize a formal bid process for purchases or services or to secure a vendor; eliminates the requirement of an in-kind match as a part of the grant process and to make housekeeping changes.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no impact on the State General Fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the nature of the proposed changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Carl Wilgus, Tourism Administrator, (208) 334-2470 ext. 2149.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this August 2, 2006.

Carl Wilgus
Tourism Administrator
Department of Commerce and Labor
State Street Office
700 W. State Street, Boise, ID 83720-0093
(208) 334-2470 ext. 2149 / (208) 334-2631 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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000. LEGAL AUTHORITY.

These rules have been adopted pursuant to Sections 67-4715, 67-4717 and 67-4718, Idaho Code, which imposes a two percent (2%) tax on the sale of hotel/motel and private campground accommodations and created the Idaho Travel and Convention Industry Committee, herein referred to as the Idaho Travel Council (ITC). The revenues generated by this ~~new~~ tax are to be invested one-half (1/2) by the state and one-half (1/2) by the local regions within Idaho in well-planned promotional programs. The Idaho Travel Council, through the Idaho Department of Commerce and Labor (IDC), has been given the responsibility of administering this program which includes the local regional grant program. ~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS, REGIONAL/LOCAL/SPECIAL INTEREST PROMOTION.

The applicant must establish that the plan will attract more visitors to the region and keep them in the region longer. All plans must identify Idaho and market various attractions and events throughout the region. Regional applications must be a true region-wide promotion, and must promote the planning region as defined in the legislation. The following items are eligible projects: (5-3-03)

01. Advertising. Ranked Primary. Priority will be given to advertising that is image-driven and targets specific attractions or events within the region and ties to the state advertising plan. Markets, concepts, attractions and events will be defined in the application. If developed as a co-op, pre-approval is required by the Department of Commerce and Labor. Applicant must state in the application: (5-3-03)

- a. Objective and placement of advertising. (2-22-93)
- b. Geographic target audience. (2-22-93)
- c. Demographic target audience. (2-22-93)
- d. Fulfillment plans. (2-22-93)

02. Hospitality. Ranked Primary. Hospitality training will be an allowable item under the grant program. A detailed plan for the training must be included in the application. (2-22-93)

03. Convention Promotion. Ranked Primary. Trade shows (to be approved prior to the application process) and convention advertising. Concept and placement must be submitted with application. (2-22-93)

04. Site Visits/Familiarization Tours (FAMS). Ranked Primary. Tour Operators, Travel Writers, Convention Planners, Winters Sports Clubs and Airline Sales People are groups that can be invited for site visits and FAMS. Grant funds can be used for one hundred percent (100%) of travel and lodging expenses for FAM participants. Grant funds can also be used for in-

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state transportation, fuel expenses, rental vans, motorcoaches, invitations, baggage tags, information folders and miscellaneous snacks, such as coffee, soda pop, and candy bars. ~~Airfare for FAM participants, up to fifty percent (50%) of the total cost, and lodging at fifty percent (50%) of the state rate will be eligible with prior ITC staff approval.~~ Grant funds cannot be used to pay for alcoholic beverages, and attractions. ~~Familiarization tours will be allowed per diem for meals in accordance with state guidelines. Partial reimbursement, per state guidelines, will be made if participant is not being hosted on the FAM tour a complete day.~~ FAMS must be coordinated and approved in writing by the Department of Commerce and Labor. (5-3-03)(____)

05. Fulfillment. Ranked Primary. Includes expenses directly related to implementing ITC funded plan. Eligible costs are for shipping, stuffing, sorting, envelopes, postage, eligible website costs per ITC guidelines, long distance phone calls and watts line. ~~(Only one 1-800 line per Region, and it must be centrally located and made available for use within the Region for travel and convention promotion). A distribution plan must be outlined in the application and expenses must be properly documented before reimbursement will be made.~~ Once the remaining elements of the grant are awarded, ten percent (10%) of the total award will be awarded for fulfillment. (5-3-03)(____)

06. Travel and Trade Shows. Ranked Primary. Specific shows and the number of attendees per show shall be approved prior to the application process. The applicant must identify in the application whether or not a portable display booth is available and what literature will be distributed at the show. (2-22-93)

07. Slide Shows/Videos. Ranked Tertiary. Applicant must state in the application the purpose of the slide show/video, how it will be used to promote the area, and how the slide show/video ties in with the applicant's overall marketing. (2-22-93)

08. Marketing Research. Ranked Primary. To allow marketing research in conjunction with the statewide marketing and research efforts. (2-22-93)

09. Capital Outlay. Ranked Secondary. Equipment with a useful life of more than one (1) year, costing one hundred fifty dollars (\$150) or more per unit. No more than one (1) piece of any like equipment per Region. (7-1-98)

a. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant will vest upon acquisition with the grantee. (2-22-93)

b. Useful Life. The useful life of all equipment acquired through the travel grant program is five (5) years. (2-22-93)

c. Use. (2-22-93)

i. Equipment shall be used by the grantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the ITC. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by the ITC. (2-22-93)

ii. The grantee shall also make equipment available for use on other projects or

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programs currently or previously supported by the ITC, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the ITC. (2-22-93)

iii. The grantee may not use equipment acquired with grant funds to provide services for a fee. (2-22-93)

iv. When acquiring replacement equipment, the grantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property; or, the proceeds will be reinvested into the grantee's current grant program, subject to the approval of the ITC. Sale proceeds are not cash match. (2-22-93)

d. Management Requirements. Capital outlay purchased with grant funds must be accounted for on the property record supplied by the ITC. When the property is initially purchased, the grantee will provide all the required information on the property record. Send the original to the Department of Commerce and Labor and keep a copy for your files. The property is tracked through its useful life. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements: (2-22-93)

i. Property records maintained must include a description of the property; a serial number or other identification number; the acquisition date and cost of the property; the location, use and condition of the property; and any ultimate disposition information including the date of disposal and sale price of the property. (2-22-93)

ii. The grantee will conduct an annual physical inventory of the property and the results will be reported to the ITC for reconciliation with the property records. This report will accompany the final narrative progress report, and must be received before final ITC reimbursement, to the grantee, is made. The ITC will conduct a physical inventory of the property at least once every two (2) years. (2-22-93)

iii. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. (2-22-93)

iv. Adequate maintenance procedures must be developed to keep the property in good condition. (2-22-93)

e. Disposition. Disposition of equipment purchased with ITC funds will be made as follows: (7-1-98)

i. Items of equipment which have exceeded their useful life may be retained, sold or otherwise disposed of. It is recommended the sale proceeds be used to acquire like equipment or enhance the grantee's current grant program. Sale proceeds are not cash match. (2-22-93)

ii. Items of equipment which have not exceeded their useful life may be sold with written authorization from the ITC. The grantee will be required to use the proceeds to purchase like equipment or to enhance the current grant program. (2-22-93)

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f. Procurement. When procuring equipment under the travel grant program, the grantee will follow the same policies and procedures for purchases over five thousand dollars (\$5,000) as outlined in the Bid Process section of the administrative rules. (3-20-04)

g. Purchasable Equipment. A list of purchasable equipment under the travel grant program is listed below: (2-22-93)

- i. Travel Show Booth (per ITC requirements). (2-22-93)
- ii. Video Equipment: Player/Recorder, Television, Monitor, Camera. (2-22-93)
- iii. Movie Projector. (2-22-93)
- iv. Slide Projector. (2-22-93)
- v. Computer Hardware per ITC guidelines. (5-3-03)
- vi. Equipment not listed above may be fundable at the discretion of the ITC. (2-22-93)

h. Rental Costs. Grantees are encouraged to complete projects in the most cost effective manner. If the purchase of equipment is not feasible due to a low use factor, the grantee will be allowed to enter into rental agreements to meet their equipment needs. Rental costs exceeding five thousand dollars (\$5,000) will not be exempt from the travel grant program's bid process. (3-20-04)

i. Application. When applying for grant funds to acquire equipment, the applicant must stipulate need for equipment, its location, intended use, and contact person. (2-22-93)

10. Brochure. Ranked Primary. Includes expenses for brochure photography, design, and printing. Applicant shall state the purpose of the brochure, indicate if it is a reprint or new design, provide an estimated amount to be printed, and give a brief description of its layout and design. Additionally, applicant shall indicate its target audience, distribution plan, and include samples of the brochure, if available. For printing requirements, see Subsection 204.08. (2-22-93)

11. Other Items. Any other items not included above may be eligible as pre-approved by the Department of Commerce and Labor. (2-22-93)

(BREAK IN CONTINUITY OF SECTIONS)

204. PLAN REQUIREMENTS.

Applicants must follow these requirements: (2-22-93)

01. Goals/Objectives. The needs of the plan must be consistent with the ITC Strategic Objectives. (2-22-93)

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02. Adequate Management. The applicant must show his/her ability to properly operate and maintain the management and accounting system for the plan. (7-1-98)

03. Previous Grant Versus New Application. The ITC encourages successful applicants to complete all grants in a timely fashion. When considering applicants for funding, the ITC will scrutinize the applicant's historic grant record in terms of timeliness and effectiveness of implementation. (2-22-93)

04. Application Completeness. The applicant must submit applications to the Department of Commerce and Labor on the appropriate forms which will be provided by the department. The application must include a complete plan, grant summary sheet signed by the grantee, a detailed scope of work and a budget which includes sufficient funds for sales tax and an audit. (7-1-98)

05. Application Amendments/Withdraws. Amendments to either the scope of work or the budget on grant applications will be allowed only if changes are submitted to the Department of Commerce and Labor ten (10) working days prior to the grant awards utilizing the same format as the application submittal. Any other changes must occur on the floor during awards by the Council and can only be amended by a member of the Council. Applicants wishing to withdraw applications must provide written notice to the Department of Commerce and Labor ten (10) working days prior to grant awards. (3-20-04)

06. Plan Duration. Applicants are encouraged to limit the duration of their plan to fourteen (14) months or less. (2-22-93)

07. Local/Regional Support. Applicants may show local/regional support of the plan by submitting up to three (3) letters of support. One (1) letter summarizing local match must be submitted with the application. (2-22-93)

08. Credit Logo and Printing Identification. All plans funded by the Idaho Regional Travel and Convention Grant Program shall credit said program. (5-3-03)

a. A logo, as determined and provided by the ITC, with the following guidelines, will be placed on all ITC funded brochures. Special permission to adjust the size of the approved ITC logo, except where specified in these rules, must be granted by the state. (5-3-03)

i. The approved ITC logo will be used in all publications in a color in keeping with the design of the piece and must be pre-approved by ITC staff before final printing. (5-3-03)

b. Eight and one-half by eleven inch (8 1/2" x 11") or larger brochures will incorporate the use of a logo at least one-half inch (1/2") ~~logo in height~~; eight by ten inch (8" x 10") or smaller brochures, will incorporate the use of a logo at least one-fourth inch (1/4") ~~logo in height~~ ~~(5-3-03)()~~

c. Printing Identification: ITC grant year, assigned ITC grant number, printed quantity. (5-3-03)

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d. State 800 Telemarketing Number: "For additional information on Idaho, call 1-800-VISIT-ID." (2-22-93)

e. The word "IDAHO" shall appear prominently on the front of the brochure. The ITC approved logo will appear on either the front cover, the inside front cover, or the back cover of the brochure. (5-3-03)

f. Other printed materials, websites, and print advertising shall include the approved ITC logo. Size of logo to be proportional to the size of the website or publication. ~~See www.tourism.idaho.gov/grants-for-current-downloadable-graphic-elements. Approved logos and graphic elements will be available on the Department's tourism grant web site.~~ (4-11-06)()

i. Slide shows, videos, films, TV productions or commercials will include the approved ITC logo. Size to be proportional to the size of the ~~grantee~~ approved content. (5-3-03)()

ii. Radio advertisements will include the following ITC acknowledgement: "Visit Scenic Idaho". (3-20-04)

iii. Billboards will include the approved ITC logo. Size to be proportional to the size of the display. (5-3-03)

iv. Trade show booths will display the approved ITC logo in a size and location easily viewable by the public. (5-3-03)

g. FAMS funded by the Idaho Regional Travel and Convention Grant Program will credit that program with the approved ITC logo in materials appropriate to the event. (5-3-03)

h. Failure to comply with crediting the ITC for project funding could jeopardize payment for that project and future plan funding. (2-22-93)

09. Consultants. Indirect personnel costs are inherently eligible when applying for a specific project to be subcontracted to a consultant. The following regulations apply to hiring a consultant: (7-1-98)

a. The contract between the consultant and the grantee must be approved by the Department of Commerce and Labor and shall include language stating the contractor has sufficient Workmen's Compensation or liability insurance. Payment will not be reimbursed until the Department of Commerce and Labor has approved the contract. (2-22-93)

b. Consultant's billing must be itemized. Lump sum billings will not be eligible for payment. (2-22-93)

c. The Council will not fund retainers or other regular ongoing fees for consultant services or pay a consultant to administer a grant. (2-22-93)

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(BREAK IN CONTINUITY OF SECTIONS)

209. BID PROCESS.

01. Bids. Regional Travel and Convention Program grantees must utilize a bid process for purchases or services over ~~five~~ twenty thousand dollars (\$~~520~~,000). (~~3-20-04~~)(____)

02. Documentation. Prior to reimbursement for each cost, the appropriate information shall be submitted to the Department of Commerce and Labor which documents the following: (2-22-93)

a. Item or service to be purchased. (7-1-98)

b. Informal bids are required for projects between one thousand five hundred dollars (\$1,500) and ~~five~~ twenty thousand dollars (\$~~520~~,000). This consists of contacting three (3) vendors. Formal bids are required for projects greater than ~~five~~ twenty thousand dollars (\$~~520~~,000). This requires three (3) written bids from vendors. (~~3-20-04~~)(____)

c. List vendors contacted and their response (list those contacted whether or not a response was received). (7-1-98)

d. Justify why the successful vendor was selected. (2-22-93)

e. Annual renewal of the subcontract can be made without rebidding, upon execution of a new contract between the grantee and the subcontractor and approval by the Department of Commerce and Labor. This can be done only after the initial three (3) bids have been processed. Subcontract renewal is authorized for up to three (3) years beyond the initial contract year. (7-1-98)

f. If a vendor is going to donate part of his/her charges as match, he/she shall have been the lowest bidder. (2-22-93)

(BREAK IN CONTINUITY OF SECTIONS)

221. PLAN EVALUATION.

The plan application is evaluated by the following prior to selection by the Idaho Travel Council: (7-1-98)

01. Department of Commerce and Labor. Applications are submitted to the department initially for a technical and programmatic review. Strict attention is given to application content, strengths and weaknesses, cost analysis, and past performance. Comments are developed and presented to the ITC for its consideration prior to funding. (7-1-98)

02. Idaho Travel Council. The department provides each Idaho Travel Council

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member with a copy of all plan applications submitted for that grant period. ITC members review and evaluate all applications. Evaluation from the department is considered in the selection process. (7-1-98)

03. Matching Funds. Match must be documented in the application. (2-22-93)

a. The Idaho Regional Travel and Convention Grant Program requires match from all organizations applying for funding as a way to: increase the regional/local commitment to the plan, to assist in generating more dollars to tourism promotion, and to allow the ITC to participate in more promotional efforts. (2-22-93)

b. All regional and local/special interest plans must provide ~~fifty percent (50%) cash match, two dollars (\$2) to one dollar (\$1) local/regional. Of the fifty percent (50%) required match, up to seventy five percent (75%) will be accepted as in-kind. Up to ten percent (10%) of ITC funds awarded will be allowed as in-kind match for administrative expenses of twelve and one-half percent (12.5%) of the amount awarded.~~ All match must be outlined in the scope of work within the grant contract. ~~Reimbursement will be made by the Department of Commerce and Labor as the match can be documented.~~ Audits are exempt from match requirements. (7-1-98)(____)

c. Cash match is defined as ~~cash or in-kind~~ (documented cash contributions/donations). ~~Expenditures claimed for components necessary to the completion of the plan such as staff time, rent, travel, audits and watts line, will be allowed as match.~~ Expenditures claimed for projects funded previously by the grantee, such as brochures and publications, will not be allowed as match. (2-22-93)(____)

04. Technical Review. The following criteria are elements considered in the review of the application: (2-22-93)

a. Application Completeness: Summary sheet, scope of work, and budget filled out correctly. (2-22-93)

b. Agency/Jurisdiction Commitment: Evidence the plan has local/regional support. (2-22-93)

c. Demonstrated Accounting and Management System: History of adequate accounting and management system for monitoring the plan. (2-22-93)

d. Need: Addresses identified needs of the travel economy in the impacted region. (2-22-93)

e. Regional Impact: Will increase local/regional awareness, encourage visitors to stay longer or promote intra-regional travel. (2-22-93)

f. Continuing Benefits: Assurance that results will continue to be used beyond grant support. (2-22-93)

g. Plan Design: Plan designed to enable achievement of anticipated benefits or results

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(achieving goals and objectives within a reasonable time frame). (2-22-93)

h. Plan Innovation: Plan demonstrates clear solution to the stated needs. (2-22-93)

i. Evaluation: Plan demonstrates a sound methodology for measuring achievement of the stated project objectives. (2-22-93)

j. Cost Analysis: Applicant shows evidence that other resources are not available to support the plan fully, and requested funds are sufficient to accomplish plan objectives. (2-22-93)

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IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.03.01 - RULES OF THE BROADBAND DEVELOPMENT MATCHING FUND PROGRAM

DOCKET NO. 09-0301-0601 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-4702, Idaho Code and Senate Bill No. 1498.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There are no changes to the pending rule. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Volume 06-8, pages 93 through 97.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jay Engstrom, Deputy Director, (208) 332-3570 ext. 2121.

DATED this 6th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2006.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 67-4702, Idaho Code, and Senate Bill No. 1498.

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Broadband Development Matching Fund PENDING RULE

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To establish a Broadband Development Matching Fund program that benefits rural Idaho communities. This fund was established during the 2006 Legislative session in Senate Bill No. 1498.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rule is being promulgated in response to Senate Bill No. 1498.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

Senate Bill No. 1498 appropriated \$5,000,000 from the General Fund to the Economic Recovery Reserve Fund for the creation and funding of a new Rural Broadband Development Matching Fund Program.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is in response to Senate Bill No. 1498.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jay Engstrom, Assistant Deputy Director, (208) 332-3570 ext. 2121.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 30th day of June, 2006.

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Broadband Development Matching Fund PENDING RULE

Jay Engstrom
Assistant Deputy Director
Administrative Services Division
Idaho Department of Commerce and Labor
317 W. Main Street, Boise, ID 83735
(208) 332-3570 ext. 2121
(208) 334-6430 Fax

THE FOLLOWING IS THE TEXT OF THE TEMPORARY AND PROPOSED RULE

IDAPA 09 TITLE 03 CHAPTER 01

09.03.01 - RULES OF THE RURAL BROADBAND DEVELOPMENT MATCHING FUND PROGRAM

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4702, Idaho Code. (5-1-06)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 09.03.01, “Rules of the Rural Broadband Development Matching Fund Program”. (5-1-06)T

02. Scope. These rules implement Senate Bill 1498, enacted by the Second Regular Session of the Fifty-eighth Idaho Legislature and signed into law on April 12, 2006. These rules implement the Department’s procedures for project selection, award and disbursement of grant funds for the Rural Broadband Development Matching Fund Program. (5-1-06)T

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretations of these rules. (5-1-06)T

003. ADMINISTRATIVE APPEALS.

The award of grants under the Rural Broadband Development Matching Fund Program is a function to be performed by the Department in its sole discretion. In light of the discretionary nature of awarding these grants, there is no administrative appeal under these rules. (5-1-06)T

004. OFFICE -- OFFICE HOURS -- ADDRESS AND CONTACT INFORMATION.

The mailing address of the Department for information regarding the Rural Broadband Development Matching Fund Program is: Idaho Department of Commerce and Labor, Broadband

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Grant Program, 317 West Main Street, Boise, ID 83735. The telephone number is (208) 332-3570 ext. 3229 and the facsimile machine number is (208) 334-6430. Office hours are between 8 a.m. and 5 p.m. on regular business days Monday through Friday. (5-1-06)T

005. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (title 9, chapter 3, Idaho Code). (5-1-06)T

006. -- 012. (RESERVED).

013. DEFINITIONS.

01. Broadband Service. The availability to the average residential or small-business subscriber of a transmission signal at a rate of at least two hundred and fifty-six thousand (256,000) bits per second (256 kbps) from a subscriber (upstream) and at least five hundred and twelve thousand (512,000) bits per second (512 kbps) to a subscriber (downstream). (5-1-06)T

02. Department. Idaho Department of Commerce and Labor. (5-1-06)T

03. Fund. The Rural Broadband Development Matching Fund. (5-1-06)T

04. Project. Discrete activities proposed by an applicant directly related to the provision of rural broadband services to potential new subscribers. (5-1-06)T

05. Proposal. One (1) or more projects submitted to the Rural Idaho Broadband Investment Program. (5-1-06)T

06. Qualified Entity. Any legal entity in good standing and authorized to conduct business in the state of Idaho as an incorporated organization, cooperative, or limited liability company organized on a for profit or not-for-profit basis; an Indian tribe or tribal organization as defined in 25 U.S.C. 450b(e) and (l); or a local unit of government. (5-1-06)T

07. Rural. Any city or unincorporated area of less than ten thousand (10,000) in population based upon the most recently published population statistics of the U.S. Bureau of the Census. Excluded from the definition of "rural" is any territory, incorporated or unincorporated, included in an urbanized area, as defined by the U.S. Bureau of the Census as of August 10, 1993. (5-1-06)T

014. PROGRAM PROPOSAL SUBMISSION GUIDE.

The Department shall develop a "Rural Idaho Broadband Investment Program Proposal Submission Guide." This Guide shall give a general description of the Rural Idaho Broadband Investment Program and provide the forms and instructions for submitting a project proposal. Copies of the Guide are available for public inspection and copying at the address indicated above or at <http://cl.idaho.gov>. (5-1-06)T

015. REQUIRED PROJECT PROPOSAL FORMAT.

01. Format and Order. Project proposals shall be submitted using the format and

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order contained in the most recent “Rural Idaho Broadband Investment Program Proposal Submission Guide.” Proposed projects not following the required format and order will be deemed to be unresponsive and will not be considered for selection. (5-1-06)T

02. Multiple Projects. Multiple projects can be submitted together as one proposal. However, each individual project will be evaluated and scored based upon its own merits. Each project must be described separately, with its own project budget and related project pages. Applicants must indicate whether the approval of one project in the proposal is a prerequisite to the applicant’s ability to complete any other project in the proposal. Multiple projects without prerequisites must be numbered and described in the proposal before those having prerequisites. (5-1-06)T

016. ELIGIBLE APPLICANTS.

To be eligible for reimbursement from the Fund, an applicant must be a qualified entity or a partnership of qualified entities; have the legal capacity and authority to enter into contracts; and have the legal capacity and authority to own and operate the broadband service facilities being proposed. Eligible applicants shall not include individuals. (5-1-06)T

017. ELIGIBLE PROJECTS.

To be eligible for reimbursement from the Fund, eligible applicants must propose projects that provide broadband services to potential new subscribers in a rural area. In their project proposals, applicants must clearly identify and document the following: (5-1-06)T

01. The Source, Amount and Availability of Matching Contributions. The source, amount and availability of matching contributions must be clearly identified and described. If matching contributions are to be provided by a third party, documentation of the third party’s commitment must be provided to the Department no later than the date specified in the most recent “Rural Idaho Broadband Investment Program Proposal Submission Guide.” Applicants who fail to timely document the commitment of third party matching contributions to the sole satisfaction of the Department will not be eligible for project funding. (5-1-06)T

02. The Number of Potential New Subscribers. The number of potential new subscribers in a rural area to be served by the project and a description of the methodology used for determining that number. (5-1-06)T

03. Marketing Plan. The marketing plan to be used for advertising the availability of broadband services to potential new subscribers in the project’s rural area. (5-1-06)T

04. Start-Up Costs. The start-up costs, if any, to be paid for broadband services by potential new subscribers. Start-up costs include charges for equipment, one-time charges, initial set-up charges, installation charges, or any other charge to a potential new subscriber that is over and above the regular monthly subscription charge. (5-1-06)T

05. Budget. An itemized budget for the proposed project. (5-1-06)T

018. MATCHING CONTRIBUTIONS.

Applicants must contribute a matching contribution of at least fifty percent (50%) of the total project cost. For example, if the total project cost is \$100,000, an applicant’s matching

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contribution must be at least \$50,000. Proposals from applicants providing greater than a 50% matching contribution will receive greater weight in the evaluation process. Applicants may use matching contributions from any source, but all matching contributions from third party sources must be guaranteed as available to the applicant no later than the date specified in the most recent “Rural Idaho Broadband Investment Program Proposal Submission Guide.” Applicants who fail to timely document the commitment of third party matching funds to the sole satisfaction of the Department will not be eligible for project funding. Matching contributions shall not include contributions incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to project approval. (5-1-06)T

019. RECAPTURE.

Eligible projects from eligible applicants selected for funding must actually result in broadband services being offered to potential new subscribers in a rural area. Applicants selected for funding who fail to deliver broadband services as required by the terms of their contract with the Department shall repay to the Department all amounts from the Fund that have been disbursed to the applicant. (5-1-06)T

020. SCORING CRITERIA.

In its discretion as to the weight of each criterion, the Department shall assign points and evaluate and score projects based upon the following: an applicant’s successful completion of similar projects; the number of potential new subscribers for the project; the cost to the Fund per potential new subscriber; the affordability of broadband services proposed by the project; the number of free access points for public use; the start-up costs to be paid by potential new subscribers; and the level of project matching funds. The Department shall also assign points to be awarded by the Idaho Economic Advisory Council based upon the Council’s independent assessment of project merit. (5-1-06)T

021. PROJECT PROPOSAL REVIEW AND SELECTION PROCESS.

Project proposals that have been submitted in a timely manner will go through the following process: (5-1-06)T

01. Technical Review. The Department will perform an initial technical review against the selection criteria and determine applicant and project eligibility. Projects that do not meet both applicant and project eligibility standards in the sole discretion of the Department will not be eligible for funding. (5-1-06)T

02. Preliminary Scoring. Following the technical review, eligible projects from eligible applicants will be awarded points by the Department as outlined in the most current “Rural Idaho Broadband Investment Program Proposal Submission Guide”. (5-1-06)T

03. Submission to Idaho Economic Advisory Council. Scored projects will then be presented to the Idaho Economic Advisory Council. The Council will award its points as outlined in the most current “Rural Idaho Broadband Investment Program Proposal Submission Guide” based upon the Council’s independent assessment of project merit. (5-1-06)T

04. Ranking and Award. The Department will calculate a cumulative point total and give a final priority ranking to each project with the highest number of total points ranked first and the lowest number of total points ranked last. The Department will send Notices of Award and

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begin the contracting process. Projects will be funded in the order of their priority ranking until all moneys in the Fund have been obligated. (5-1-06)T

022. CONTRACT REQUIREMENT.

All applicants that are awarded funding shall execute a contract with the Department within thirty (30) days of the date of their Notice of Award. Applicants who fail to execute a contract within this time period shall lose their eligibility for funding. A sample copy of the contract that must be executed by the applicant is included in the most recent “Rural Idaho Broadband Investment Program Proposal Submission Guide”. (5-1-06)T

023. STANDBY PROJECTS.

Ranked projects meeting the eligibility and selection criteria, but not receiving an award due to a lower priority ranking, may become standby projects. Standby projects may be eligible for funding should applicants with a higher priority ranking fail to timely execute a contract with the Department. The Department reserves the right, in its sole discretion, to either award or not award funding to standby projects. (5-1-06)T

024. -- 999. (RESERVED).

COMMERCE & HUMAN RESOURCE

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.03.04 - RULES OF THE BUSINESS AND JOBS DEVELOPMENT GRANT FUND

DOCKET NO. 09-0304-0601 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-4702, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There are no changes to the pending rule. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Volume 06-8, pages 98 through 100.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jay Engstrom, Deputy Director, (208) 332-3570 ext. 2121.

DATED this 6th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2006.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 67-4702, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be

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**DEPARTMENT OF COMMERCE & LABOR
Business & Jobs Development Grant Fund**

**Docket No. 09-0304-0601
PENDING RULE**

scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rules implement the Department's procedures for awarding grant funds for public costs associated with the recruitment of new businesses to Idaho for business and jobs development.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rule is being promulgated in response to Senate Bill No. 1499, enacted by the Second Regular Session of the Fifty-eighth Idaho Legislature and signed into law on April 12, 2006.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

Senate Bill No. 1499 appropriated \$1,000,000 from the General Fund to the Economic Recovery Reserve Fund for the creation and funding of a new Jobs Development Fund for public costs associated with the recruitment of companies to Idaho.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is in response to Senate Bill No. 1499.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jay Engstrom, Assistant Deputy Director, (208) 332-3570 ext. 2121.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 30th day of June, 2006.

COMMERCE & HUMAN RESOURCE

DEPARTMENT OF COMMERCE & LABOR
Business & Jobs Development Grant Fund

Docket No. 09-0304-0601
PENDING RULE

Jay Engstrom
Assistant Deputy Director
Administrative Services Division
Idaho Department of Commerce and Labor
317 W. Main Street, Boise, ID 83735
(208) 332-3570 ext. 2121 / (208) 334-6430 Fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 09 TITLE 03 CHAPTER 04

09.03.04 - RULES OF THE BUSINESS AND JOBS DEVELOPMENT GRANT FUND

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4702, Idaho Code. (5-1-06)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 09.03.04, "Rules of the Business and Jobs Development Grant Fund". (5-1-06)T

02. Scope. These rules implement Senate Bill 1499, enacted by the Second Regular Session of the Fifty-eighth Idaho Legislature and signed into law on April 12, 2006. These rules implement the Department's procedures for awarding grant funds for public costs associated with the recruitment of new businesses to Idaho for business and jobs development. (5-1-06)T

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretations of these rules. (5-1-06)T

003. ADMINISTRATIVE APPEALS.

The award of grants under the Business and Jobs Development Fund are made at the discretion of the Director of the Department of Commerce and Labor. In light of the discretionary nature of awarding these grants, there is no administrative appeal under these rules. (5-1-06)T

004. OFFICE -- OFFICE HOURS -- ADDRESS AND CONTACT INFORMATION.

The mailing address of the Department for information regarding the Business and Jobs Development Fund is: Idaho Department of Commerce and Labor, Business and Jobs Development Fund, 317 West Main Street, Boise, ID 83735. The telephone number is (208) 332-3570 ext. 3229 and the facsimile machine number is (208) 334-6430. Office hours are between 8

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a.m. and 5 p.m. on regular business days Monday through Friday. (5-1-06)T

005. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (title 9, chapter 3, Idaho Code). (5-1-06)T

006. -- 012. (RESERVED).**013. DEFINITIONS.**

01. Department. Idaho Department of Commerce and Labor. (5-1-06)T

02. Public Cost. any cost incurred by the state of Idaho or a political subdivision of the state of Idaho for the purpose of recruiting businesses to Idaho. (5-1-06)T

014. GRANT AWARDS.

The Director of the Department may, in his sole discretion, award Business and Jobs Development Grant Funds to administrative agencies and political subdivisions of the state of Idaho for public costs incurred for the purpose of recruiting businesses to Idaho. No grant shall be awarded unless and until the Director is satisfied, in his sole discretion, that funds from all other community, state and federal sources are not available to the grantee to pay for public costs incurred for the purpose of recruiting businesses to Idaho. (5-1-06)T

015. AWARD AMOUNTS.

The amount of each grant shall be determined by the Director, in his sole discretion, but no grant shall exceed \$200,000. (5-1-06)T

016. -- 999. (RESERVED).

COMMERCE & HUMAN RESOURCE

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.02.06 - EMPLOYERS REPORTS

DOCKET NO. 17-0206-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, and 72,723, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

1. To reconcile conflicting time periods by changing the second time period to fifteen (15) days from ten (10) days;
2. To allow sureties sufficient time to capture data they are required to submit on the Summary of Payments by extending the reporting time period from sixty (60) days to one hundred twenty (120) days;
3. To allow auditing of total and permanent benefit payments in a time frame within which useful feedback may be given and corrections made by changing the language of the rule to "...In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually..."

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Volume 06-10, pages 324 through 328.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mindy Montgomery at 334-6000.

DATED this 30th day of October, 2006.

COMMERCE & HUMAN RESOURCE

IDAHO INDUSTRIAL COMMISSION
Employers Reports

Docket No. 17-0206-0601
PENDING RULE

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, and 72,723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

- 1) To reconcile conflicting time periods by changing the second time period to fifteen (15) days from ten (10) days;
- 2) To allow sureties sufficient time to capture data they are required to submit on the Summary of Payments by extending the reporting time period from sixty (60) days to one hundred twenty (120) days;
- 3) To allow auditing of total and permanent benefit payments in a time frame within which useful feedback may be given and corrections made by changing the language of the rule to "...In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually... "

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact with the adoption of this rule change.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these are technical changes without any party known to be interested in negotiating any of these changes deemed to be non-controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mindy Montgomery 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 22nd Day of August, 2006.

COMMERCE & HUMAN RESOURCE

IDAHO INDUSTRIAL COMMISSION
Employers Reports

Docket No. 17-0206-0601
PENDING RULE

Mindy Montgomery, Director
Industrial Commission
317 Main Street
P.O. Box 83720, Boise, ID 83720-0041
Phone: 334-6000 / Fax: 334-2321

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 317 Main Street, 2nd Floor, Boise, ID 83702-7274. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

0047. -- 020. (RESERVED).

021. SUMMARIES OF PAYMENT.

01. Authority and Definitions. Pursuant to Sections 72-432, 72-508, 72-602 and 72-707, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the procedure for submission of summaries of payment to the Industrial Commission. This procedure applies to all workers' compensation claims. The following definitions shall be applicable to this Rule. (2-20-95)

a. "Commission," means the Idaho Industrial Commission. (2-20-95)

b. "Medical Only Claim," means the injured worker will neither suffer a disability lasting more than five calendar days as a result of a job-related injury or occupational disease nor be admitted to a hospital as an in-patient. (2-20-95)

c. "Time loss claim," means the injured worker will suffer, or has suffered, a disability that lasts more than five calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (2-20-95)

d. "Impairment rated claim," means those claims in which a provider establishes an impairment rating for the injured worker. (2-20-95)

COMMERCE & HUMAN RESOURCE

IDAHO INDUSTRIAL COMMISSION Employers Reports

Docket No. 17-0206-0601
PENDING RULE

e. "Termination of disability," means the date upon which the obligation of the Employer/Surety/Adjuster becomes certain as to duration and amount whether by settlement, decision or periodic payments in the ordinary course of claims processing. If resolved by lump sum settlement (LSS), the termination of disability shall occur on the date the LSS is approved and an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final. In the context of periodic payments in the ordinary course of business, the termination of disability shall occur on the date on which final payment is made to the claimant. (2-20-95)

f. "Death claim," means the injured worker died as a result of a work-related injury or occupational disease. (2-20-95)

g. "Employer" is defined in Idaho Code, Section 72-102(11) and includes agents of employers such as attorneys, sureties and adjusters. (2-20-95)

h. "Closure," means that the file will be retired following an audit by the Commission. (2-20-95)

02. Summaries Requirement. A summary of payment shall be filed, in duplicate, by the Employer/Surety/Adjuster within ~~sixty~~ one hundred twenty (~~6120~~) days of termination of disability for all time-loss claims upon which an Employer/Surety/Adjuster has made payments, except for those claims which are resolved by lump sum settlement. In the case of medical and related benefits only cases, no summaries of payment need to be filed. In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually within the first quarter of each calendar year. Interim summaries shall be submitted setting forth substantially the same information required by Final Summaries of Payment, including the balance of payments made to the beginning of the current calendar year, payments during the calendar year, and a total of payments made. This total balance shall be carried forward as the amount of payments made to the beginning of the current year. The Final Summary shall be so designated. Supporting documentation shall be attached to any summary of payment filed with the Commission. (~~2-20-95~~)(____)

03. Form. The summary of payment forms are available, pre-printed, from the Industrial Commission, which has designated the form as IC Form 6. The summary of payment shall be submitted on eight and one-half by eleven inch (8 1/2" X 11") paper in a format substantially similar to the following: (2-20-95)

a. For death claims: (2-20-95)

SUMMARY OF PAYMENTS FATAL CASE

Surety No. _____	I.C. No. _____
Injured Person:	Employer:
Social Security Number:	Address:
Address:	

COMMERCE & HUMAN RESOURCE

IDAHO INDUSTRIAL COMMISSION
Employers Reports

Docket No. 17-0206-0601
PENDING RULE

Character of Injury:

Date of Accident:

Actual Weekly Wages:

DEPENDENTS

Name of Dependent

Relationship

Date of Birth
(if under 18)

AWARDS OF PAYMENTS COMPENSATION

Payments % AWSW

Amount

Weeks

Total

Remarks

Total Compensation Payments:

BURIAL AND OTHER EXPENSES

Payment for funeral expenses \$

Payment to hospital(s) \$

Payment to doctor(s) \$

Payment for misc. \$

Total Medical Expenses (do not include funeral expenses) \$

COMMENTS:

Claims Examiner

Date

INDUSTRIAL COMMISSION APPROVAL

APPROVED: _____, 20____

BY: _____

b. For time-loss claims:

(2-20-95)

SUMMARY OF PAYMENTS TIME-LOSS CASE

Surety No. _____

I.C. No. _____

Injured Person:

Social Security Number:

Address:

Employer:

Address:

COMMERCE & HUMAN RESOURCE

IDAHO INDUSTRIAL COMMISSION
Employers Reports

Docket No. 17-0206-0601
PENDING RULE

Character of Injury:

Date of Accident:

Actual Weekly Wages:

Date Able to Resume Work:

Compensation

Rate:

Actual Time Lost:

Weeks Days

Date of First Payment:

AWARDS OF PAYMENTS

Payments of Compensation	Amount	Type (TT or PP)
Begin	Weeks Days	Return to Work
Payment of Medical Benefits	Amount	
Doctor(s)		
Hospital(s)		
Physical Therapy		
Mileage		
Miscellaneous		
Comments:		

Claims Examiner

Date

INDUSTRIAL COMMISSION APPROVAL

APPROVED: _____, 20____

BY: _____

(2-20-95)

04. Approval. Within ninety (90) days of receipt of Summary of Payment as set forth above, the Industrial Commission shall notify the Employer/Surety/Adjuster that such summary has been approved or shall notify of its inability to reconcile the summary to its records and request additional information. If the Employer/Surety/Adjuster does not receive either an approval or request for additional information within the ninety (90) day period, the Employer/

COMMERCE & HUMAN RESOURCE

IDAHO INDUSTRIAL COMMISSION Employers Reports

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PENDING RULE

Surety/Adjuster may proceed with closure. In the event the Commission requests additional information, whether in writing or telephonic, the Employer/Surety/Adjuster shall submit the requested information within fifteen (15) working days. If the Employer/Surety/Adjuster is unable to furnish the requested information, the Employer/Surety/Adjuster shall notify the Commission, in writing, of its inability to respond and the reasons therefor within the ~~ten~~ fifteen (15) working days. The Commission may schedule a show cause hearing to determine whether or not the Employer/Surety/Adjuster should be allowed to continue its status under the workers' compensation laws, including whether the Employer should be allowed to continue self-insured status. (2-20-95)(____)

05. Changes in Status. In case of any default by the Employer or in the event the Employer shall fail to pay any final award or awards, by reason of insolvency or because a receiver has been appointed, the Employer shall submit a summary of payments for every time-loss and death claim within sixty (60) days of the default, insolvency, or appointment of a receiver. This summary will be designated as an interim summary and does not relieve the Employer, successor or receiver from continued reporting requirements. The receiver or successor shall continue to report to the Commission, including the submission of summaries of payments and schedules of outstanding awards. (2-20-95)

~~06. Effective Date. This rule shall become effective on August 15, 1994. (2-20-95)~~

COMMERCE & HUMAN RESOURCE

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0602

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule implements the requirements mandated by Section 72-803, Idaho Code.

The Commission made the following changes as a result of input received from public hearings, written comments received, and research conducted:

1. Adds a definition for ambulatory surgery centers (ASCs)
2. Changes definition of large and small hospitals from 50 beds to 100 beds.
3. Changes percentages of appropriate charges made by hospitals and ASCs.
4. Adds acceptable charge for hospital outpatient and ASCs.
5. Adds acceptable charge for surgically implanted hardware.
6. Expands the number of CPT Code ranges with conversion factors to 37.
7. Changes the first inflationary adjustment period from FY2008 to FY2009.
8. Deleted subsection 032.10 Investigation of Claim Compensability.
9. Changed the 30% administrative cost award in the dispute process to exempt hospitals except when payment is delayed after an administrative order.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Vol. 06-10, pages 329 through 335.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

COMMERCE & HUMAN RESOURCE

INDUSTRIAL COMMISSION
Miscellaneous Provisions**Docket No. 17-0208-0602**
PENDING RULE

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mindy Montgomery, Director, 208-334-6000.

DATED this 15th day of November 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Date	October 11, 2006	October 19, 2006	October 25, 2006
Time	2:00 p.m. - 5:00 p.m.	2:00 p.m. - 5:00 p.m.	2:00 p.m. - 5:00 p.m.
Location	Ameritel Inn 333 Ironwood Ave. Coeur d'Alene, ID	Industrial Commission 317 Main Street Boise, ID	Ameritel Inn 2501 S. 25th East Idaho Falls, ID

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The previously enacted temporary rule is improperly being applied to hospitals by some payors. This is outside the intent of the law. This proposed rule clarifies that it will not apply to hospitals. Also, the medical fee schedule in the temporary rule has caused some physicians to refuse to cooperate with the worker's compensation system, so the schedule is fine tuned in the proposed rule to respond to these concerns. The proposed rule clarifies that the fee schedule does not apply to hospitals and substitutes an alternative method to compute fees for hospitals. It reduces the number of conversion factors used for physician fees, and it allows health care providers to be fully paid after going through a dispute resolution process.

In April 2006 this rule adopted as a temporary rule with an effective date of April 1, 2006. The temporary rule was published in the Idaho Administrative Bulletin, Volume 06-4, April 4, 2006, pages 83 and 89. With this publication the Department is initiating proposed rulemaking.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

COMMERCE & HUMAN RESOURCE

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FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the large number of potentially interested parties and the desire to hold public hearings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mindy Montgomery, Director, 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 22nd day of August, 2006.

Mindy Montgomery, Director
Industrial Commission
317 Main Street
PO Box 83720
Boise, Id 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-2321

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 1, 2006.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, and 72-723, and Section 72-803 of the Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Incorporates recommendations submitted by an industry work group, including representatives from the Idaho Medical Association, using the Resource-Based Relative Value Scale (RBRVS) and the Relative Value Unit (RVU) assigned for all medical services with a Physicians' Current Procedural Terminology (CPT) code. A Conversion Factor for additional various categories of CPT coded services is proposed. Unnecessary language is proposed to be deleted from the rule.

COMMERCE & HUMAN RESOURCE

INDUSTRIAL COMMISSION Miscellaneous Provisions

Docket No. 17-0208-0602
PENDING RULE

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is needed to comply with the statutory directive to have conversion factors set prior to the effective date of April 1, 2006.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Thomas E. Limbaugh, Commissioner, 208-334-6000.

DATED this 23rd day of March, 2006.

Thomas E. Limbaugh, Commissioner
Idaho Industrial Commission
317 Main Street
P.O. Box 83720
Boise, ID 83720-0041

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 317 Main Street, 2nd Floor, Boise, ID 83702-7274. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

0047. -- 030. (RESERVED).

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby *substitutes adopts* the following *for the January 28, 1975*

COMMERCE & HUMAN RESOURCE

INDUSTRIAL COMMISSION Miscellaneous Provisions

Docket No. 17-0208-0602
PENDING RULE

~~amendment to the “Rules and Regulations Governing Charges for Medical Services Provided under the Idaho Workers’ Compensation Law,” dated May 2, 1973~~ rule for determining acceptable charges for medical services provided under the Idaho Workers' Compensation Law:

~~(6-1-92)~~()

~~01. Acceptable Charges Under the Idaho Workers' Compensation Law. Payors shall pay a Provider's reasonable charge for Medical Services furnished to industrially injured patients.~~

~~(6-1-92)~~

021. Definitions. Words and terms used in this rule are defined in the subsections which follow.

(6-1-92)

a. “Acceptable charge” means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider, or the charge agreed to pursuant to written contract.

()

b. “Ambulatory Surgery Center (ASC)” means a facility providing surgical services on an outpatient basis only.

()

c. “Hospital” is any acute care facility providing medical or hospital services and which bills using a medicare universal hospital billing form.

()

i. Large hospital is any hospital with more than one hundred (100) acute care beds.

()

ii. Small Hospital is any hospital with one hundred (100) acute care beds or less.

()

d. “Provider” means any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical services related to the treatment of an industrially injured patient which are compensable under Idaho’s Workers’ Compensation Law.

~~(6-1-92)~~()

e. “Payor” means the legal entity responsible for paying medical benefits under Idaho’s Workers’ Compensation Law.

(6-1-92)

f. “Medical Services” means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, facilities, equipment and supplies.

~~(7-1-95)~~()

g. “Reasonable,” ~~except as provided in Subsections 031.02.g. and 031.02.h.,~~ means a charge does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined below.

~~(7-1-95)~~()

h. “Usual” means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients.

~~(7-1-95)~~()

i. “Customary” means a charge which shall have an upper limit no higher than the

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90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. ~~(7-1-95)~~()

~~g.~~ Provided, however, that for medical services which are not represented by CPT codes, reasonableness of charges shall be determined based on all relevant evidence available, including industry standards, invoices and catalog prices. (7-1-95)

~~h.~~ Provided, further, that where a Medical Service is one that is exceptional, unusual, variable, rarely provided, or so new that a determination cannot be made as to whether the charge for the Medical Service meets the criteria of Subsections 031.02.d. through 031.02.f. above, or where the Industrial Commission staff determines that its database is statistically unreliable, reasonableness of charges shall be determined based on all relevant evidence available. (7-1-95)

02. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services. ()

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by providers other than hospitals *and ASCs*. The standard for determining the acceptable charge for hospitals *and ASCs* shall be: ()

i. For large hospitals: Eighty-five Percent (85%) of the appropriate inpatient charge. ()

ii. For small hospitals: Ninety percent (90%) of the appropriate inpatient charge. ()

iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the appropriate charge. ()

iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). ()

v. Paragraph 031.02.e., shall not apply to hospitals or ASCs. The Commission shall determine the appropriate charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Subsection 032.10. ()

b. Conversion Factors. The following conversion factors shall be applied to the Relative Value Unit (RVU) found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

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<u>CPT CODE:</u>	<u>DESCRIPTION:</u>	<u>CONVERSION FACTOR:</u>
<u>00000 - 09999</u>	<u>Anesthesia</u>	<u>\$58.19</u>
<u>10000 - 69999</u>	<u>Surgery:</u>	
<u>10000 - 19999</u>	<u>Integumentary System</u>	<u>\$67.00</u>
<u>20000 - 21800</u>	<u>Musculoskeletal System</u>	<u>\$110.00</u>
<u>22100 - 22999</u>	<u>Spine</u>	<u>\$135.00</u>
<u>23000 - 23999</u>	<u>Shoulder</u>	<u>\$110.00</u>
<u>24000 - 24999</u>	<u>Upper arm and Elbow</u>	<u>\$110.00</u>
<u>25000 - 26989</u>	<u>Forearm and Hand</u>	<u>\$120.00</u>
<u>27000 - 27299</u>	<u>Pelvis and Hip</u>	<u>\$120.00</u>
<u>27300 - 27899</u>	<u>Leg</u>	<u>\$105.00</u>
<u>28000 - 28999</u>	<u>Foot and Toes</u>	<u>\$88.00</u>
<u>29000 - 29750</u>	<u>Casts and Strapping</u>	<u>\$60.00</u>
<u>29800 - 29999</u>	<u>Endoscopy and Arthroscopy</u>	<u>\$125.00</u>
<u>30000 - 39999</u>	<u>Respiratory and Cardiovascular</u>	<u>\$88.00</u>
<u>40000 - 49999</u>	<u>Digestive System</u>	<u>\$88.00</u>
<u>50000 - 59999</u>	<u>Urinary System</u>	<u>\$80.00</u>
<u>60000 - 60999</u>	<u>Endocrine System</u>	<u>\$88.00</u>
<u>61000 - 61999</u>	<u>Skull, Meninges and Brain</u>	<u>\$125.00</u>
<u>62000 - 62258</u>	<u>Repair, Neuroendoscopy and Shunts</u>	<u>\$135.00</u>
<u>62263 - 62368</u>	<u>Spine and Spinal Cord</u>	<u>\$88.00</u>
<u>63000 - 63999</u>	<u>Spine and Spinal Cord</u>	<u>\$145.00</u>
<u>64400 - 64530</u>	<u>Nerves and Nervous System</u>	<u>\$88.00</u>
<u>64550 - 64999</u>	<u>Nerves and Nervous System</u>	<u>\$125.00</u>
<u>65000 - 69990</u>	<u>Eye and Ear</u>	<u>\$88.00</u>
<u>70000 - 79999</u>	<u>Radiology</u>	<u>\$85.00</u>
<u>80000 - 89999</u>	<u>Pathology and Laboratory</u>	<u>To be Determined</u>
<u>90465 - 90749</u>	<u>Immunization</u>	<u>\$35.00</u>
<u>90780 - 90784</u>	<u>Infusions and Injections</u>	<u>\$59.00</u>
<u>90788 - 90799</u>	<u>Injections</u>	<u>\$35.00</u>
<u>90801 - 92998</u>	<u>Psychiatry and Medicine</u>	<u>\$60.00</u>
<u>93000 - 93999</u>	<u>Cardiography and Studies</u>	<u>\$70.00</u>
<u>94000 - 94750</u>	<u>Pulmonary</u>	<u>\$60.00</u>
<u>94760 - 94762</u>	<u>Pulse Oximetry</u>	<u>\$40.00</u>

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<u>CPT CODE:</u>	<u>DESCRIPTION:</u>	<u>CONVERSION FACTOR:</u>
<u>94770 - 95999</u>	<u>Allergies: Testing</u>	<u>\$70.00</u>
<u>96000 - 96999</u>	<u>Assessments and Special Procedures</u>	<u>\$60.00</u>
<u>97000 - 97799</u>	<u>Physical Medicine and Rehabilitation</u>	<u>\$44.00</u>
<u>97802 - 98999</u>	<u>Acupuncture, Osteopathy, Chiropractic</u>	<u>\$43.00</u>
<u>99000 - 99499</u>	<u>Miscellaneous Services</u>	<u>\$63.00</u>

()

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Codes 01995 and 01996. ()

d. Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted prior to the beginning of each state fiscal year (FY), starting with FY 2009. The Commission shall determine the adjustment, which shall equal the percent change in the all item consumer price index for the west urban area, as published by the U.S. Department of Labor, for the twelve-month (12) month period ending with December of the prior year. ()

e. Services Without CPT Code, RVU or Conversion Factor. The acceptable charge for medical services that do not have a CPT code, a currently assigned RVU or a conversion factor, will be the reasonable charge for that service, based upon the usual and customary charge and other relevant *evidence*, as determined by the Commission. Where a service with a CPT Code, RVU and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.02.b., determine the *acceptable* charge for that service, based on all relevant *evidence* in accordance with the procedures set out in Subsection 032.10. ()

f. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare & Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: ()

i. Modifier 50: Additional fifty percent (50%) for bilateral procedure. ()

ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. ()

iii. Modifier 80: Twenty-five percent (25%) of coded procedure. ()

iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to

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MD and non-MD assistants. ()

032. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.

01. Authority and Definitions. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule augmenting IDAPA 17.02.08.031 (~~formerly 17.01.03.803.A, which became effective June 1, 1992~~). The definitions set forth in IDAPA 17.02.08.031 are incorporated by reference as if fully set forth herein. (1-1-93)()

02. Time Periods. None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. (1-1-93)

03. Provider to Furnish Information. A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of medical services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the medical service was provided, the diagnosis, if any, and the amount of the charge or charges. Failure to submit a bill complying with Subsection 032.03 to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Subsection 032.10 for that service. (1-1-93)()

a. CPT and ICD Coding. A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, for the year in which the service was performed and using current International Classification of Diseases (ICD) diagnostic coding, as well. (7-1-95)

b. Contact Person. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. (1-1-93)

c. Report to Accompany Bill. If ~~required~~ requested by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04.322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 032.04 and 032.06, below, shall not begin to run until the Payor receives the Report. (7-1-95)()

04. Prompt Payment. ~~If Unless the Payor acknowledges denies liability for the claim and does not or, pursuant to Subsection 032.06, sends a Preliminary Objection to, or Request for Clarification of, or both, as to any charge, as provided in Subsection 032.06, below, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. The Commission will strictly apply all time limits and deadlines established by this rule. However, a reasonable good faith effort to comply with the other provisions of this rule will generally be sufficient to protect a party's rights hereunder.~~ (1-1-93)()

05. Partial Payment. If the Payor acknowledges liability for the claim and, pursuant to Subsection 032.06 below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as

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to which no Preliminary Objection and/or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. ~~The Commission will strictly apply all time limits and deadlines established by this rule. However, a reasonable good faith effort to comply with the other provisions of this rule will generally be sufficient to protect a party's rights hereunder.~~
(7-1-95)(____)

06. Preliminary Objections and Requests for Clarification. (1-1-93)

a. Preliminary Objection. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. (1-1-93)

b. Request for Clarification. Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. (1-1-93)

c. Provider Contact. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. (1-1-93)(____)

d. Failure of Payor to Object or Request or Provide Contact. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill and/or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subsection 032.06.c., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (1-1-93)(____)

07. Provider Reply to Preliminary Objection and/or Request for Clarification. (1-1-93)

a. Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection and/or Request for Clarification. (1-1-93)

b. Failure of Provider to Reply to Preliminary Objection. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. (1-1-93)

c. Failure of Provider to Reply to Request for Clarification. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. (1-1-93)

08. Payor Shall Pay or Issue Final Objection. The Payor shall pay the Provider's bill in whole or in part and/or shall send to the Provider a written Final Objection, if any it has, to all

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or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. (1-1-93)

09. Failure of Payor to Finally Object. Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. (1-1-93)

~~**10. Investigation of Claim Compensability.** Where a Payor is investigating the compensability of a claim as to which a Provider has submitted a bill, the Payor must send a Notice of Investigation of Claim Compensability to the Provider and the Patient within fifteen (15) calendar days of receipt of the Provider's bill. The Payor shall complete its investigation of claim compensability and notify the Commission, the Provider and the Patient of its determination within thirty (30) calendar days of the date the Notice of Investigation of Claim Compensability is sent. Where a Payor does not timely notify the Commission, the Provider and the Patient of its determination, the Payor shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule.~~ (1-1-93)

~~**a. Single Objection Sufficient.** A single objection stating that liability has been denied shall be sufficient for each Provider from whom a bill is received.~~ (1-1-93)

~~**b. Effect of Commission Determination of Claim Compensability.** The thirty (30) day period in which the Payor must pay the bill or send a Preliminary Objection and/or Request for Clarification shall recommence running on the date of entry of a final Commission order determining that the claim is compensable.~~ (1-1-93)

~~**c. Effect of Determination of Compensability.** If the Payor, absent a Commission determination of claim compensability, concludes that it is liable for a claim, the thirty (30) day period in which the Payor must pay the bill or send a Preliminary Objection and/or Request for Clarification shall begin running on the date the Payor notifies the Commission, Provider and Patient that it accepts liability for the claim.~~ (1-1-93)

~~**11. Dispute Resolution Process.** If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors as Referenced in HDAPA 17.02.08: Sections 031 and 032 of this rule (formerly 17.01.03.803.a. and 803.b.). If Provider's motion disputing CPT coded items prevails, Payor shall pay the amount found by the Commission to be owed, plus an additional thirty percent (30%) of that amount to compensate Provider for costs and expenses associated with using the dispute resolution process. For motions filed by a hospital or ambulatory surgical center, under section 031.02.a.v., or by a provider under 031.02.e, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount found due within thirty (30) days of the administrative order.~~ (1-1-93)()

~~**12. Requirements Regarding Disputes Arising Before the Effective Date of This Rule.**~~ (1-1-93)

~~**a. Written Demand Required.** If, prior to January 1, 1993, a Payor notifies or has~~

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~~notified a Provider that it does not intend to fully pay any charge for Medical Services incurred prior to January 1, 1993, the Provider seeking payment for such charge must send a written Demand for Payment to the Payor no later than January 31, 1993. (Note: Should the matter ultimately proceed to the dispute resolution phase set forth in the Judicial Rule, the Commission will resolve the dispute by applying the administrative rule which was in effect at the time the charge was incurred. Hence, if the charge in dispute was incurred prior to June 1, 1992, the Commission will use this dispute resolution process to determine whether the Provider's charge is acceptable pursuant to the provisions of IDAPA 17.01.03.803, then in effect. However, if the charge in dispute was incurred on or after June 1, 1992, the Commission will use this dispute resolution process to determine whether the Provider's charge is acceptable pursuant to the provisions of IDAPA 17.02.08.031, now in effect.)~~ (1-1-93)

~~b. All Provisions of this Rule Will Apply. Such a Demand shall substitute for the bill and Report referenced in Subsection 032.03 above, and must contain all the information required by that section. Service of a timely Demand for Payment will bring the other provisions of this rule into operation.~~ (1-1-93)

~~c. Failure of Provider to Make Written Demand. Providers failing to make a written Demand for Payment within thirty (30) calendar days of the effective date of this rule shall be forever barred from invoking the Dispute Resolution Process set forth in the applicable Judicial Rule. Demands and/or billings submitted previously either to the Payor or to the Commission will not suffice.~~ (1-1-93)